SENATE—*Tuesday, June 7, 1994*

The Senate met at 1:30 p.m. 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, please.

PRAYER

For I know the plans that I think toward you, saith the Lord, plans of peace, and not of evil.—Jeremiah 29:11.

Sovereign Lord, You have made it clear in Your Word that You know each of us in the totality of our lives. You love us and You have a perfect plan for us. As the Senate goes back to work, it faces an uncommon challenge—a universal health plan, welfare reform, and the growing threat of violence and crime. As debate ensues, with election day drawing closer and closer, the tendency is that more heat than light is generated.

God of all wisdom, in this milieu of pressure, help the Senators and their staffs realize that a God of perfect love is interested in their activity. He is ready to guide them in the perfection of His will to the best possible resolution to every issue.

Gracious God, lead the Senate in Your perfect way and help them accept that leadership.

In His name who is the Way, the Truth, and the Life. Amen.

RECOGNITION OF THE MAJORITY LEADER

The PRESIDENT pro tempore. The majority leader is recognized.

SCHEDULE

Mr. MITCHELL. Mr. President and Members of the Senate, there will now be 2 hours for morning business, the first 90 minutes of which will be controlled equally by myself and the minority leader and will be devoted to statements with respect to the 50th anniversary of the D-day invasion.

At 3:30 p.m. today, the Senate will proceed to the consideration of the procurement reform bill. There will be no rollcall votes today. Amendments may be offered, and if votes are required on those amendments, they will be scheduled to occur on tomorrow.

Following the disposition of the procurement reform bill, the Senate will proceed to the airport improvements bill. And then over the next several days it is my hope and expectation that we can begin consideration of the several appropriations bills on which our action will be required, as well as the clean water bill, the striker replacement bill, and a number of other important measures to be considered during this legislative period.

TRIBUTE TO PAUL HOUSTON

Mr. MITCHELL. Mr. President, I wish to express my sorrow at the death of Paul Houston, a longtime congressional reporter for the Los Angeles Times and a familiar face in the Halls of Congress, who passed away on May 29.

Paul's career as a congressional reporter spanned more than 20 years. He played a prominent role in the Times' coverage of Watergate, the House impeachment proceedings against President Nixon, and the Iran-Contra hearings. He also brought to life the less publicized but no less important aspects of the legislative and political process.

His reporting on the legislative agenda was tough, fair, and provocative. His skill and dedication were an example to many younger reporters.

I believe I speak for all Senators when I say that Paul Houston will be missed by those of us who have the honor to serve in Congress, by the many readers who learned about our work through his reporting, and by his many colleagues in the Senate Press Gallery.

THE 50TH ANNIVERSARY OF THE D-DAY INVASION

Mr. MITCHELL. Mr. President, yesterday, President Clinton and many Members of Congress in France observed the 50th anniversary of the D-day invasion.

On June 6, 1944, thousands of allied soldiers embarked on one of history's greatest military undertakings. The conditions were difficult, and there were significant losses. There were 6,500 American casualties alone.

The sacrifices were great, but the results proved to be even greater.

The invasion was a turning point of World War II. Through their successful landing in Normandy, allied troops established a foothold for the liberation of France and the eventual breakthrough into Germany. Months of planning and training and the commitment of thousands of troops and tons of materiel paid off and led to an allied victory. The successful invasion was a crucial stepping stone to achieving the ultimate goal: the defeat of Hitler and the surrender of Nazi Germany.

This outcome was not easily achieved. The troops participating in what was called Operation Overlord faced extraordinary circumstances: parachuting into the darkness to secure roads; landing on the beach in cold, rough seas, each soldier loaded down with at least 60 pounds of gear; encountering heavy German fire across the beaches.

But our troops overcame every obstacle. They fought long and hard and, ultimately, they won.

The success of the invasion set in motion a chain of events that would change the course of history. The Nazi stranglehold on France was released, and over the next 11 months the menace of Nazi Germany was eliminated.

These months were difficult and required the continued commitment and cooperation of the allies. Harsh fighting on the eastern front and the continuing battles on the newly established western front demanded further investments of troops and supplies by the allied nations. Victory required the destruction of Hitler's Nazi Germany, and our troops and their leaders rose to the occasion.

Winston Churchill summed up the magnitude of the threat when he said:

> Victory at all costs, victory in spite of terror, victory however long and hard the road may be; for without victory there is no survival.

We made many sacrifices, and democracy survived; indeed, democracy has flourished. Nations came together to fight a common enemy, and that cooperation was essential to the success of the invasion and in the war itself.

President Roosevelt told our Nation, when he recognized that our future was bound with the future of freedom on the European continent, that we defend a way of life not for Americans alone but for all mankind. He recognized the community of ideals which binds all free nations together. He described the four freedoms on which human life and happiness depend: the freedom of expression, the freedom of worship, the freedom from want, and the freedom from fear.

As we observe the 50th anniversary of the invasion, today the world, of course, looks much different than it did in 1944. The cold war is over. Democracy has triumphed in much of the world. The totalitarian Germany of Hitler has been transformed and is not a reliable democratic ally.

Much of this change can be traced directly to the heroic efforts of those young men who landed on the beaches of Normandy.

They gave their strength, their courage and, in many cases, their lives so that future generations, including ours, could live in freedom and peace.

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

AUTHENTICATED U.S. GOVERNMENT INFORMATION GPO

We are the most fortunate people ever to have lived, to be Americans, citizens of the most open, the most free society in all of human history. We owe much of our good fortune to those who so valiantly served their Nation and the cause of freedom in the D-day invasion of June 6, 1944. They have our ever-lasting admiration and gratitude.

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

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

The assistant legislative clerk proceeded to call the roll.

Mr. COVERDELL. 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.

The Senator from Georgia.

THE ENORMOUS PRICE OF FREEDOM

Mr. COVERDELL. Mr. President, I rise to join my colleagues, both in Europe and here, on the occasion of the 50th anniversary of the invasion of Europe by the Allied armies, officially celebrated this past Monday, yesterday, June 6.

Mr. President, for anyone who was alive at the time of the invasion, it was a defining moment, something that had a profound effect on every American, whether they were coming out the landing craft, flying over Europe, or at home trying to grasp every straw of information, listening to every crackling radio broadcast, trying to understand the fate of the Americans and the Allies as they set forth to accomplish what, until then, had thought to be virtually impossible.

As we try to remember the enormous sacrifice, which still leaves myself and I think most in awe of the courage and fortitude and commitment it must have taken to achieve the landing and the subsequent months of combat, it also crystallizes for each of us all that went before then and since.

Somewhat a facet of irony, Mr. President, was that on the Saturday before the celebration, I had the occasion to visit Andersonville in the southwestern quadrant of the State of Georgia, where is located currently another national cemetery. And, like on the beaches of France, there are rows and rows and rows of markers, nearly 13,000—12,980—from all the existing States of the Union, for those who died in a very brief period, who died in defense of the Union and of freedom.

It is a very somber and sobering experience to be reminded by this beautiful monument, among the many that there are placed by the States of the Union honoring the fallen, but this is a particularly poignant one—about 20 feet tall, maybe 50 feet wide, an attractive woman, with two children at her knees, is pointing across the markers as if to say, "Remember what they have done. Remember what they have done."

And then on each side of the monument are two life-sized gentlemen who are in pensive reflection. My own interpretation is, they are guarding and musing in their minds on the enormous sacrifice.

Many of the deaths were caused by the lack of appropriate food and, more importantly, fouled water. At the height of the calamity, there were some 35,000 Americans in a 26-acre area stockade. And at the height of the crisis, a huge thunderstorm came through the prison. And in the late evening during the thunderstorm, a spring actually burst forth from the land.

Mr. President, one of the things we remember about Normandy so vividly is that, for some reason, it reinforced the individual's importance. Throughout this enormous logistical invasion, we have always remembered Normandy through the action of select individuals. And it has pointed out, as much as anything I have ever seen, that no matter how great the task, it is unattainable without the individual's commitment.

Mr. President, I truly hope, for all the generations that have secured freedom and peace and quality of life in this country as a result of the enormous sacrifice, that the permanent sacrifice paid by these young Americans will be a vivid reminder of the enormous, enormous price of freedom. It comes very expensively.

Mr. President, I yield the floor.

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

The PRESIDENT pro tempore. The absence of a quorum has been suggested. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. BROWN. 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.

Mr. BROWN. Mr. President, I ask unanimous consent to proceed for 10 minutes in morning business.

The PRESIDENT pro tempore. Is there objection? There being no objection, the Senator from Colorado [Mr. BROWN] will be recognized for not to exceed 10 minutes.

Mr. BROWN. I thank the Chair.

(The remarks of Mr. BROWN, pertaining to the submission of Senate Resolution 219 are located in today's RECORD under "Submission of Concurrent and Senate Resolutions.")

(Disturbance in the visitors' galleries.)

The PRESIDENT pro tempore. There will be no demonstrations in these galleries of approval or disapproval.

Mr. ROCKEFELLER addressed the Chair.

The PRESIDENT pro tempore. The Senator from West Virginia [Mr. ROCKEFELLER].

OUTBREAK OF EXPRESSION FROM THE GALLERIES

Mr. ROCKEFELLER. Mr. President I applaud the action which you just took. I have been in the Senate only 9 years, but I have only experienced, I believe, one instance of an outbreak of expression of some sort from the galleries. That is against the Senate rules. It is not appropriate in this hallowed Chamber, and I applaud the distinguished Presiding Officer for his actions.

Mr. President, in that the leaders have reserved leaders' time for remarks with respect to D-day, I ask unanimous consent that I have such time as I might require for remarks with respect to that subject.

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

FREEDOM AT NORMANDY

Mr. ROCKEFELLER. I thank the distinguished Presiding Officer, my friend and senior colleague from West Virginia.

Mr. President, yesterday was an extraordinary day, a very emotional day. I was deeply struck by the President's use of the phrase "we are the children of your sacrifice."

I think there are millions of Americans who share that feeling, and one is constantly optimistic about the nature of the American people and about the nature of American life. I very much hope that the events—not just of yesterday, but those leading up to yesterday—and the emotions, sentiments and facts that relate to what we celebrated yesterday will, in some way, supply part of the healing which we constantly need in this country. I hope it will supply not only a cross-generational healing, but also a sense of respect for what we are capable of doing in America when we set out to accomplish an objective.

It was an extraordinary day and I, therefore, take, Mr. President, a few moments to pay tribute to some very brave American soldiers, sailors and aviators who, 50 years ago, fought for freedom at Normandy on D-day.

The allied invasion of occupied France on D-day, June 6, 1944 set into motion the liberation of a tortured European Continent. As the allied command had hoped, the shorelines of Normandy proved to be the launching point from which the emancipation of Europe and ultimate victory would soon unfold.

The alliance of Americans and British and Canadians and French, and others, who fought together on D-day was held together not only by military code. These brave individuals were bound together through the same values, the same convictions, and the same allegiances. We probably will never know for sure whether or not the

more than 150,000 young soldiers and sailors realized—each of them—the full meaning of their undertaking on D-day, as they were carried toward the Normandy coast aboard the largest allied armada ever assembled.

Most of them were really very young. Some not much older than children. All of them, however, believed that some things are truly worth risking the ultimate sacrifice. Things like democracy, liberty, freedom from oppression and tyranny of any kind whatsoever. These individuals—all—had full lives ahead of them. They knew that. There is nothing quite so glorious as the buoyancy of youth.

Yet, they believed in these principles strongly enough to risk their lives in the name of freedom. They are true heroes, Mr. President, and stand as examples to all of us.

Mr. President, I would like to talk for a moment about one such brave soldier, who came in fact from the home county of the Presiding Officer, the President pro tempore of the Senate. I think that this young man's words and actions illustrate the meaning of selfless sacrifice much better than anything I could ever say myself.

Pfc. Walter C. Walker—his family hailed from Beckley, WV—was a junior at Woodrow Wilson High School in Beckley when he enlisted in the Marines in November 1942. He was sent overseas in 1943 at the age of 19, never to return home. After learning of their only son's death in 1944, Mr. and Mrs. Walker received a letter written by that young man—young boy—expressing in a sense his prebattle farewell, perhaps his sense of premonition. Walter wrote to his parents:

> This is the most unusual letter that I've ever written. It may be the last letter I ever write. I'm going into combat, I don't know where, but it will be in a very few days. I am leaving this letter in my sea bag and in case something should happen to me, I hope it will be sent on to you. Just remember I am prepared to go.

A chaplain found that letter as he was checking over the gear of the 20-year-old boy and then sent it on to the boy's family. That letter continued, Mr. President:

> Frankly I think I will come back, but you never can tell what little accident will happen. I am doing this for my country and people I love. So that little children may grow up to be free and not have to take orders from devils like Hitler and Tojo. I will gladly give my life to keep you and dad free as long as you may live.

He added that he wanted his parents to take his insurance money, which was probably not very much, but take that money to fix up their home and to live happily. He said in his letter:

> Please do this last favor for me. I want you to be the happiest mother and dad in Beckley.

These words are extraordinary, deep, and they are very humbling to me. Humbling because they show not only young Walt Walker's selflessness and patriotism but his apparent grasp of why he was venturing into harm's way—to fight for freedom.

Mr. President, today, as I speak, the incredible and turbulent events of D-day stand as 50-year-old historical facts. As the world knows, France had been overrun by the Germans in 1940. Since 1941, Hitler's Third Reich had controlled the entire west coast of Europe. Hitler constructed a mighty defensive line called the Atlantic Wall, an intimidating barrier of steel, concrete, troops and weaponry that followed the shoreline for 22,400 miles. Allied commands agreed that the only way to free the enslaved French people and, indeed, all of Europe was to breach the Atlantic Wall's monumental defenses.

There can be no question that the D-day invasion of Normandy comprised 24 of the bloodiest hours of World War II. American casualties alone are estimated to have been at over 6,600. Overall, 12,500 Allied soldiers lost their lives on that day, and an additional 10,000 were wounded. These losses were painful, profoundly affecting families and loved ones across my home State of West Virginia and the entire country. However, the very least that can be said is that these sacrifices were in no way made in vain.

The course of World War II, which looked very grim in June of 1944, was successfully turned toward an Allied victory as a direct result of the D-day invasion.

Today, as I reflect on the order of the day issued by Gen. Dwight D. Eisenhower, commander of the Allied expeditionary forces, to all Allied troops on the eve of D-day, June 5, 1944, I sincerely believe that every one of those brave young soldiers in fact understood the gravity of their situation. In his order, General Eisenhower spoke with inspiration and sincerity to his troops stating—and these are his words:

> Soldiers, sailors, and airmen of the Allied expeditionary force, you are about to embark on the Great Crusade toward which we have striven these many months. The eyes of the world are upon you. The hopes and prayers of liberty-loving people everywhere march with you.

Mr. President, America's D-day warriors risked everything on the shores of Normandy and did so with a spirit and conviction which I think is uniquely American. For this reason, I am immensely grateful to America's D-day veterans and, frankly, stand in awe of them. From now until September 1995, the 50th anniversary of major battles and other events that shaped World War II will spur veterans to return to the sites where they served in Europe and in the Pacific Ocean. Other commemorations will take place across the United States of America.

Let us take these upcoming opportunities to make a solemn promise to America's fallen heroes. Let us pledge to show them, through our actions and our reverence, that we truly understand what it is for which they did in fact die and sacrifice. Let us do that by finding strength and inspiration from the bravery, courage and spirit displayed by America's D-day veterans. Let us continue to uphold steadfastly the democratic ideals and freedoms for which they lived and for which they died, many of them, so many of them so young, 50 years ago.

Mr. President, I also want to note with profound appreciation that 21 of my colleagues in this Senate are veterans of World War II themselves. I commend them all for the courageous military service they have given our Nation. In particular, I wish to recognize my colleague from South Carolina, STROM THURMOND, whose part in the D-day invasion itself was remarkable and something for which I as an American am truly grateful.

These colleagues who served their country through the military, continue to serve the United States with distinction and leadership.

I was profoundly moved also, Mr. President, to see photographs of the President together with Senator INOUYE, Senator DOLE, Senator HOLLINGS, and Senator PELL in their remembrance of their work in fighting in Italy. We come to know each other somewhat in this body, but sometimes we learn things that give us a special kind of respect.

It is for the well-being of the brave men and women who have served in the Armed Forces that the Senate Committee on Veterans' Affairs continues to work diligently. Let me say that. They are what the committee is all about. Just as America's veterans have continued to ensure our Nation's security, I have pledged my chairmanship of the committee to ensuring that the security and care of our Nation's veterans remains steadfast and true.

Without question, veterans deserve the benefits and services their country promised them in return for military service. Veterans deserve the best health care America has to offer, adequate compensation for service-connected disabilities, and to know in their hearts that their country acknowledges the many sacrifices made to keep our country strong.

From now until September 1995, the 50th anniversaries of major battles and other events that shaped World War II will spur veterans to return to the sites where they served in Europe and the Pacific. Other commemorations will take place across the United States. As chairman of the Senate Committee on Veterans' Affairs, I want to take this opportunity to remind Americans that all of us we are still bound today by what bound us 50 years ago. Let us take these upcoming opportunities to make a solemn promise to America's

fallen heroes. Let us pledge to show them through our actions and reverence that we truly understand what it is they died for, fought for, and suffered for.

Mr. President, I conclude by borrowing a quote from another fellow West Virginian, Miles Kidd of Sissonville. Miles served with the 82d Airborne Division on D-day in Normandy and survived to tell about his important experiences. Among his many observations in the war I found the following the most insightful. He said:

> I know the people of West Virginia and all in this country appreciate what we did. I would like to think that nobody in our country would ever have to do that again, go through another World War II. It seems to me that there should be some way for civilized people all over the world to avoid wars. It is a waste of human life—not really a waste of life because we accomplished something that had to be accomplished. But on all sides everyone lost an awful lot of young lives, just barely starting out. There ought to be a way to avoid that.

As he said, there in fact ought to be a way to avoid these things.

Mr. President, I again express my deep regard, respect, and awe for Senator THURMOND, for our fellow colleagues who are World War II veterans, and for other veterans all over this country who, I am sure like myself, were profoundly affected by the events, not just of yesterday but of the days that led up to it. I pray that these have been and will continue to be days of healing within our country, days where one generation looks to another, and, says, "Thank you for giving me the freedom that I today have."

Mr. President, I thank the Presiding Officer. I yield the floor.

TRIBUTE TO THE HEROES OF D-DAY

Mr. GRAHAM. Mr. President, yesterday, June 6, marked the 50th anniversary of the D-day invasion. In recognition of this important day, I request that the following statement be entered into the RECORD in tribute to those who participated and risked their lives in this historic event.

On a single day, half a century ago next month, 156,000 Allied troops landed in the province of Normandy, France, in one of the boldest invasions of World War II. Allied paratroopers filled the skies, and soldiers stormed ashore along a 60-mile stretch of beach in what would be one of the greatest amphibious operations in military history. It was D-day, June 6, 1944, and the Allies had launched their campaign to liberate France and overthrow Nazi Germany.

The Allied command spent nearly a year planning for the day. Three million fighting men and women and 16 million tons of materiel were assembled in England from all over the world.

As we commemorate the 50th anniversary of this historic event, I would like to recognize some of the outstanding Americans who risked their lives for our country and for the cause of democracy. Many of those brave soldiers either came from or now reside in my home State of Florida.

Representative SAM GIBBONS, a native of Tampa, FL, where his family has lived for a century, is the only Member of the 103d Congress who took part in the D-day invasion. SAM was a 24-year-old captain in the paratroops when the invasion was launched and was among the 12,000 parachutists from the 101st and 82d Airborne Divisions that dropped into Normandy before dawn on June 6. Nearly 1,000 planes took part in the assault that preceded the landing on the beaches at 6:30 a.m. by the American infantry forces.

SAM was the third man out of his plane and dropped 800 feet to a hard landing with over 35 pounds of ammunition and equipment on his back. In the darkness, Captain GIBBONS and his unit landed at least 6 miles from the planned drop zone, an area crawling with 70,000 German troops. He has recently written a gripping account of his night drop and the ensuing events as he and his small unit fought their way back to their main units battling for a foot hold in the occupied French soil.

When asked why his memories of that day are so vivid after almost 50 years, he observed,

> For most of us, the rest of the war seems to be a blur with a few high spots that we can remember, but D-day and the day following seemed to be burned into our memories. Perhaps it was because it was our first brush with the enemy and death.

Capt. Robert M. Piper, a retired colonel living in Daytona Beach, FL, was a regimental adjutant on D-day and was presented with a Bronze Star for his actions. As he recalls,

> We jumped—everyone was ready for fresh air, come what may—and landed in a farmyard. * * * German patrols and ground troops were alerted, and our contact with them increased. There were strong firefights inside the town. * * * The division had 57 percent casualties. * * * But the American flag was flying in Ste. Mere-Eglise on D-day.

First Lt. Joseph Miller, now retired and living in Sun City Center, FL, was among the troops in the first wave that landed at Utah Beach on D-day. He remembers the day well.

> Our mission was to establish the beachhead, but then we had to fight our way inland to meet the paratroopers and the glider troops that had come in during the night. * * * I saw paratroopers that were shot by the enemy hanging in the trees. And there was this paratrooper lieutenant colonel, he had his .45-caliber pistol in his hand. There was a German kitchen train pulled by horses. He had shot both horses and a couple of guys, and then somebody got him. He was just laying there on the road.

In the face of this horrible nightmare, Joseph Miller found the courage and strength to fulfill his mission.

I am proud today to offer my deepest gratitude to the deceased and living American veterans of this great battle. We honor their love of country and willingness to die in defense of our highest principles.

I suggest the absence of a quorum.

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

The bill clerk proceeded to call the roll.

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

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

The Chair will make an announcement.

Under the previous order, we are in a period for the transaction of morning business not to extend beyond the hour of 3:30 p.m. with Senators permitted to speak therein for not to exceed 5 minutes each.

The Chair recognizes the Senator from North Carolina.

Mr. HELMS. Mr. President, I ask unanimous consent that I be permitted to proceed for no more than 5 minutes.

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

Mr. HELMS. I thank the Chair.

IRRESPONSIBLE CONGRESS? TAKE A LOOK AT THIS

Mr. HELMS. Mr. President, the incredibly enormous Federal debt is like the weather—everybody talks about the weather but nobody does anything about it. And Congress talks a good game about bringing Federal deficits and the Federal debt under control, but there are too many Senators and Members of the House of Representatives who unfailingly find all sorts of excuses for voting to defeat proposals for a constitutional amendment to require a balanced Federal budget.

As of Monday, June 6 at the close of business, the Federal debt stood—down to the penny—at exactly $4,605,340,458,317.52. This debt, mind you, was run up by the Congress of the United States, because the big-spending bureaucrats in the executive branch of the U.S. Government cannot spend a dime that has not first 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 pay no attention to the nonsense from politicians that the Federal debt was run by one President or another, depending on party affiliation. Sometimes they say Ronald Reagan ran it up; sometimes they say George Bush. I have even heard that Jimmy Carter helped run it up. All three suggestions are wrong. They are false because the Congress of the United States is the villain.

Most people 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 going on. A billion minutes ago, not many years had elapsed since Christ was crucified.

That sort of puts it in perspective, does it not, that Congress has run up a Federal debt of 4,605 of those billions—of dollars. In other words, the Federal debt, as I said earlier, stands today at $4,605,340,458,317.52.

COMMEMORATING D-DAY

Mr. LIEBERMAN. Mr. President, 50 years after June 6, 1944, the words "D-day" and "Normandy" bring to mind in every American memories of the heroic and selfless deeds of the young men who went ashore on that longest day to liberate Europe from Nazi tyranny. The stories of courage, dedication, and loyalty to comrades in arms as well as to the principles of democracy, liberty, and justice are well known to us all. But as we enjoy the fruits of victory which were won with the blood of young men spilled on the beaches of Normandy and on the fields of northern France, Belgium, Germany, and Italy, let us stop to pay tribute to those who carried the torch of freedom back to the people of Europe. And let us stop to reflect on what their sacrifices mean to us in the midst of this troubled time in which we live.

D-day was a victory of freedom bought at the price of too much of the youth of the United States, Britain, Canada, France, Holland, Denmark, Norway, Poland, Lithuania, Latvia, Estonia, and Russia.

It was a victory of the human spirit—a ringing affirmation that tyranny cannot prevail as long as free men and women are willing to confront it.

It was a victory of military professionalism—without the leadership, vision, planning, and dedication of the military men and women of all the Allies, Normandy would have remained a beach of Nazi barricades, mines, and death.

It was a victory of sacrifice at home—in Britain where the courageous people of the United Kingdom refused to give up even under constant attacks from Nazi air forces and weapons of terror; in all of the occupied countries where freedom-loving peoples refused to accept Nazi domination and fought on through their undergrounds, provided invaluable intelligence to Allied planners, and waited for the day when help would arrive from the world's great democracies; in Russia where ultimately nearly 1 in every 10 Russians died fighting Nazi aggression; and in the United States where victory gardens had sprung up when the United States entered the war, rationing was imposed and endured without grumbling, and children who wanted to do their part to fuel the arsenal of democracy bought war stamps and collected scrap metal and other vital war materials.

The landings at Normandy were possible in large part because American know how, economic vitality, industrial capability, and energy were mustered to build the tools necessary to fight a global war on two diverse fronts and to rearm our Allies while simultaneously equipping our own growing military forces. We should never forget that in many American factories, forges, and mills, it was our mothers and grandmothers, sisters and aunts who carried the load while the men of America went off to war.

When Americans stormed Nazi defenses along the Normandy shore on June 6th 50 years ago, they carried the message to free people everywhere that the world's greatest democracy would not stand idly by and watch the candle of freedom extinguished by the forces of tyranny, injustice, and despotism. We stand for those same principles today. In many ways, the world is a more complicated place 50 years after D-day, but the core values of America have not changed.

On this the 50th anniversary of D-day, we should reaffirm our belief in our principles and our belief in ourselves. Brave and selfless men and women from all over America serve every day in far off places to protect our national interests and to bring peace and freedom to all corners of the world.

We are indeed the descendants of those brave men who fulfilled America's promise not to abandon democracy in 1944. Fifty years later we simply must not forget. As Harold Mohn has said in his poignant poem, "The Headstones White at Saint Laurent":

The headstones that stand mute and still
At Laurent by the sea,
Remind us of the price we paid
To bring France liberty.
Here lie the flower of our youth
Who never lived to see,
The peace for which they fought and died
And hoped would ever be.

* * * * *

God, grant the sacrifice they made
So far across the sea,
Will live within each heart and mind
And not forgotten be.

RECOGNIZING CALLOWAY COUNTY STUDENTS

Mr. FORD. Mr. President, today I would like to draw attention to a group of students and their teacher from Calloway County High School in Murray, KY.

The students—George Bowling, Caleb Brown, Michael Haney, Tom Henninger, Justin Manna, LeAnna McCoy, Paige Patterson, Matt Perry, Jaime Pigg, Josh Roberts, Alexia Schempp, Neal Simmons, Derek Smee, and Crystal Roberts—participated in We the People . . . The Citizen and the Constitution national finals, under the direction of their teacher, William Cowan.

Their presence alone at this national forum on the history and principles of the U.S. Constitution and Bill of Rights, made all Kentuckians proud. Their performance revealed hours of hard work and dedication to mastering the concepts and principles of our political system and its history.

But perhaps even more important, I believe their motivations for taking on this extra school work reveal an intellectual curiosity that will serve them well throughout their lives.

I also want to commend their teacher, William Cowan, for recognizing that the job of educating our young people cannot end when the bell goes off, and that some of the most important lessons often occur beyond the classroom walls.

Sometimes we forget the growing demands being placed on our teachers, and it is always a pleasure to get a chance to show our appreciation for their time and dedication.

In closing, Mr. President, I hope these students will continue to pursue studying their Government, and continue to be involved in the democratic process.

I know that if their performance at the national finals was any indication, they'll make the Commonwealth of Kentucky proud.

COMMEMORATION OF THE 50TH ANNIVERSARY OF D-DAY

Mr. DOMENICI. Mr. President, in the spirit of the celebration of the 50th anniversary of D-day, and the turning point of World War II, I want to extend a personal note of gratitude to all of the veterans who will be gathering today in the towns across America, and the world, to celebrate 50 years of freedom and to reflect on the tremendous sacrifice that it took to win that freedom. This week's events remind us of the dedication, professionalism, and sacrifice that our Armed Forces have offered on behalf of our great Nation.

World War II was the most violent armed conflict in the history of mankind. While World War II continues to absorb the interest of military scholars and historians, as well as veterans, a generation of Americans has grown to maturity largely unaware of the political, social, and military implications of a war that, more than any other, united us as a people with a common purpose.

In one day, 50 years ago, 156,000 American, British, Canadian, Free French, and Polish troops landed on the beaches of Normandy and engaged in one of the bloodiest battles of World War II. From the air and from the sea, soldiers stormed ashore along 60 miles of beach in one of the greatest amphibious operations in the history of mankind. The Allies had launched their

campaign to liberate France and overthrow Nazi Germany.

Field Marshal Erwin Rommel, commander of the Germans' coastal defenses in northern France, had often told his subordinates that if the Allies were not thrown back into the sea in the first 24 hours of their invasion, it would all be over for Nazi Germany. Eleven months later Rommel's prediction came true.

The Allied victory did not come without great cost. Thousands of young Americans lost their lives fighting for our freedom, and the freedom of Europe. Millions of American families were torn apart by the war. It took a combined effort as a nation to support, fight, and win World War II. So it is fitting, that with great respect and gratitude for those who gave all of their tomorrow for our today, that we pay tribute to them exactly 50 years after the great turning point in World War II occurred.

We must never forget their daring acts of heroism, but more importantly, we must never forget what it was they valued so much that they were willing to give up their lives. The death and sacrifice of veterans who fought in World War II has bought our Nation 50 years of freedom.

Mr. President, I went to Normandy to celebrate the American spirit which brought the Allies to victory in World War II. I went with pride on behalf of all New Mexicans, but especially on behalf of New Mexican veterans and their families who fought and died to secure our freedom. I thought of all of them during my trip. As a U.S. Senator from New Mexico I want to pay tribute to all the American families who participated in the great triumph and personally made tremendous sacrifice to win our freedom during World War II.

INVASION AT NORMANDY: HONORING THE DEFENDERS OF PEACE AND FREEDOM

Mr. DASCHLE. It is easy today for Americans to take for granted our role as a world power. Our close alliances with Germany, Italy, and Japan are considered natural, beneficial. Yet only 50 years ago, these nations were the enemy, and the very future of the world itself was uncertain.

Yesterday, we celebrated the 50th anniversary of the D-day invasion, when Allied soldiers stormed the beaches at Normandy and went on to help liberate France and the rest of Europe. And although the German Army would fight on against the Allies for another year, D-day would mark the beginning of the fall of the Third Reich.

Never again will the world witness a naval invasion like the one that occurred on June 6, 1944. Having convinced German intelligence that they would attempt a major landing at Calais, the Allied forces sent ashore more than 150,000 soldiers at the beaches of Normandy. Heavy casualties resulted—more than 10,000 men dead or wounded—and yet, when the invasion was complete, the Allies had gained a foothold on the European continent.

Many American soldiers never made it to shore that day, having been shot down by the heavy firepower from German strongpoints high upon the cliffs or drowned by the weight of the gear they carried. Those who did make it to the beach faced continued enemy fire, mortar shells, land mines, and treacherous trips over the cliffs and into territory held by the Germans.

We honor all these soldiers—those who lived to see the liberation of Europe and those who died for that cause. Their supreme sacrifice for freedom and democracy has not been, and never must be, forgotten.

Although the official D-day celebrations are over, our memories of the 50th anniversary of this historic event will not soon fade. For those who fought to liberate Europe during World War II, this has been a time to remember fallen comrades and to take pride in having risked their lives for their country. For those who remained on the homefront on that fateful day 50 years ago, this has been a time to remember how they waited for news of the deadly contest between fascism and democracy. For those who had not yet been born when our men stormed the beaches at Normandy, this has been a time to learn about the sacrifices that an earlier generation had made for our Nation. And for everyone, it has been a time to express our gratitude to these defenders of peace and freedom, for America and for all the world.

THE PASSING OF EZRA TAFT BENSON

Mr. KEMPTHORNE. Mr. President, this past Memorial Day weekend, Idaho and the Nation joined the Church of Jesus Christ of Latter-day Saints in mourning the death of President Ezra Taft Benson.

For the past 9 years, President Benson has lead the L.D.S. Church as prophet, seer, and revelator. During his time as president, church membership grew to nearly 9 million members worldwide.

Idaho is proud to be home to such a great leader. President Benson was born in Whitney, ID, on August 4, 1899. His service in the church included callings as the president of the Boise stake in 1930, president of the Washington, DC stake from 1940 to 1943, president of the European mission following the close of World War II, and a member of the Quorum of the Twelve Apostles.

There was a brief break in his church service from 1953 to 1961 when Elder Benson took a leave of absence from the Quorum of the Twelve to serve as Secretary of Agriculture under President Dwight D. Eisenhower. In announcing his selection for Secretary of Agriculture, President Eisenhower said he was appointing a farmer to the position, and, indeed, Ezra Taft Benson brought his Idaho farmer work ethic to the President's Cabinet.

Ezra Taft Benson has been an inspiration to people inside his church and out. From helping rebuild Europe following World War II, to encouraging members of his church to strengthen their families and read their scriptures, Ezra Taft Benson has touched many lives.

Mr. President, we are saddened by the death of such a great man, but grateful for the life he lived, the good he brought into the world, and the way he represented his family, his church and his Nation.

REGARDING THE 50TH ANNIVERSARY OF D-DAY

Mr. ROBB. Mr. President, the English Channel laps against the French shore in endless waves of grey. I would like to speak for a moment about a time within my memory when those same waves were grey with the steel of ships, and far too often red with the blood of brave men.

Fifty years ago at this moment, the world awaited history's most fearsome storm. Across the island called England, on parade grounds and airfields, at piers and in countless headquarters, Americans prepared to once again put themselves in harm's way for the defense of liberty.

They were our pride, those kids, these men. They came from places called Omaha, and Utah. And they traveled thousands of miles to unfamiliar places with those same familiar names, to offer their lives that others might breathe free.

They came not for personal gain nor glory. They came, simply, to remove a fearful shadow which had descended upon Europe, and which threatened to engulf the world.

In liberation's armada came every sort of American, diverse in background but united in purpose. Their task was by no means assured. Victory would require the defeat of the most successful armed force then operating, in many cases on its home terrain, operating with short lines of communication and supply.

But no foe is so inspiring as unambiguous evil. And no task so rousing as fighting for one's buddies, one's nation, and indeed one's world. American troops bent themselves to that task with relentless precision, inventiveness, and will. And with their very lives.

The Allied triumph led by America not only freed the Old World, it led to a new one. The end of the war brought an economic boom in which American

democracy and American-style market economies became the standard against which all others are measured.

As we watch the celebrations of their valor, and the reunions of buddies now older in body but still courageous of spirit, we remember also those who gave the last full measure of devotion. If ever you hear America's dedication to freedom questioned; if ever someone says that ours is a selfish or introspective nation, mention simply this: From just one tiny town in Virginia—Bedford—11 neighbors came to free Europe from tyranny. And, neighbors still, they now lie together beneath the emerald grass of France.

Mr. President, this country owes much to those, some in this body, who took upon themselves the duty of representing in body the ideals of freedom. They were our pride—and so they remain, even today.

UNITED STATES AID TO TAJIKISTAN

Mr. DECONCINI. Mr. President, I have heard reports that the Agency for International Development [AID] is considering limiting assistance programs for Tajikistan to multilateral humanitarian aid. I believe this would be a big mistake, and would also run counter to what the new management at AID hopes to achieve.

The poorest of the former Soviet republics, Tajikistan has had a dismal post-independence history. Reform efforts by a coalition of Democratic and Islamic forces brought armed repression by the Communist leadership, aided by Russian and Uzbek forces. The civil war that erupted there in mid-1992 ravaged the country. Estimates of the dead range between 20 to 50,000, and about half a million inhabitants became refugees and internally displaced people.

Today, though crossborder incursions from Afghanistan by Tajik-Afghan fighters continue, Tajikistan is fairly stable. The best indicator of this welcome development is that most internally displaced people and many refugees have returned home. The Communists have reestablished control over Tajikistan, but negotiations have been underway with Democratic and Islamic groups, and these offer prospects of creating workable relations between the government and the opposition.

In these circumstances, with a ray of hope on the horizon, precisely what Tajikistan needs is development aid. Humanitarian assistance has created a modicum of stability. But there is massive unemployment, and unless people can feed themselves and earn a living, social discontent will erupt again, and the stability that has been gained risks being lost.

I do not have in mind increased aid for Tajikistan, but moneys already allocated should stress development. The basic idea of such programs is helping Tajiks to help themselves, rather than depend on outside humanitarian assistance. For example, the Aga Khan Foundation has submitted a proposal to teach people how to generate sufficient and sustainable food production. Obviously, this would be preferable to sending massive food aid for the West on a long-term basis. There are many other similar projects for creative assistance. Skin diseases have afflicted the population because of the absence of soap. The International Rescue Committee has asked for money to rebuild a soap factory, which would not only use locally available materials to produce a desperately needed commodity, but would also provide jobs.

The new leadership of AID has often spoken about restructuring aid so as to foster self-reliance, rather than to prolong dependence. This is a welcome change from past practices, and I am therefore puzzled by reports that AID would not consider funding developmental programs in Tajikistan. The result would be the exact opposite of what AID says it wants to accomplish.

Mr. President, a recent spate of newspaper stories have focused on dissatisfaction with the conceptualization and implementation of United States assistance to the New Independent States. Tajikistan, where humanitarian efforts have brought solid results, could be a success story for foreign aid, if it is administered with imagination and an eye toward the future.

THE 50TH ANNIVERSARY OF NORMANDY INVASION

Mr. SIMPSON. Mr. President, I had the most distinguished honor and pleasure in August of 1991 to visit Normandy and lay a wreath on the tomb of a Wyoming soldier's grave. Just today, I returned from Normandy again where I was able to mark the 50th anniversary of the now famous D-day invasion, which was the beginning of the end of World War II.

Through these visits, I truly realized why it is so vitally important for us to honor the memories of the hundreds of thousands of Americans and Allied soldiers who suffered and died during World War II. For that reason, I would simply like to reflect for a few moments about just how deeply that event changed the course of history and how important the actions taken that day—June 6, 1944—remain in our world today.

My own recollections of this time in our history are vivid beyond imagination. I was a young boy of 13 and I had charts on my bedroom wall and I knew where every unit of the Allied Forces were moving—from the beaches of Normandy to the interior of the beast—until our forces eventually pierced the black heart of the monster in Berlin, itself. That all occurred. I happened in an astonishingly short range of months. I shall never forget listening to the crackling of the radio and then watching "Movietone News" with Lowell Thomas telling us that our boys were moving forward. Indeed, they were moving forward.

Fifty years ago, 153,000 American, British, and Canadian troops stormed across the English Channel and hit the beaches of northern France, launching a final push that within 11 months crushed the Nazi Germany Army. Their goal was the liberation of Europe and the preservation and restoration of freedom, liberty, and dignity in the western world.

The D-day assault involved 5,000 naval vessels and 11,000 sorties of Allied aircraft. Three divisions of airborne troops, the 82d and the 101st of the United States and the 6th of Britain, dropped inland and captured key military outposts, preventing German reinforcements from reaching them. I think of our beloved colleague, Strom Thurmond, and how he was demonstrating his leadership even then as he led forces of the 82d Airborne through enemy lines in the most extraordinary act of courage. What a man.

I am a veteran of the end of that era and I served in Europe with the occupation forces in Germany. It was also the birth of a new era. The largest amphibious invasion in history laid the foundation for the Marshall plan, the recovery of Europe, and the birth of the Atlantic Alliance—and NATO.

What we must always remember is the absolute awesomeness of it all. As I looked over the vast expanse of white crosses and Stars of David in the American cemetery, I was deeply moved. As one U.S. veteran said: "That represents freedom and blood." Because our collective national memory is often too short, it is of the deepest importance that we commemorate what took place in Normandy 50 years ago.

Today, few wars seem to be based on so just a cause as the struggle against the Nazis. But, let us always keep faith with the virtues that have not changed—valor and sacrifice in the defense of freedom. In honoring them, we will keep their spirit alive. Of course, in the end, the most heroic challenge is not to win future wars, but to avoid them altogether. The task is to ensure that the horrors and evil which made World War II necessary do not arise again—and that our youngest and finest and brightest and strongest men and women never fight again—on any foreign or domestic shore.

FESTA ITALIANA

Mr. LAUTENBERG. Mr. President, I rise today to pay tribute to the efforts of everyone who has made the Festa Italiana an important cultural event in

New Jersey. This event is a shining example of a cultural festival, celebrating the Italian-American heritage.

Saturday, June 11, 1994, marks the 24th consecutive year of the Festa Italiana. This heritage festival offers the citizens of the State of New Jersey a chance to fully experience Italian-American culture, an indispensable part of American history.

Yet this festival is not just remarkable for bringing together Italian-Americans. All of the proceeds go to a fund which provides free theater tickets, as well as to a scholarship fund for New Jersey high school students. This outstanding dedication to philanthropic causes presents an example for all New Jerseyans and all citizens to follow.

The spirit of cooperation and caring that pervades the entire festival is embodied by the volunteers who sacrifice their time and energy to make the event a success. I commend this attempt by the Italian-American community to remember their ancestral heritage, while still celebrating their experiences in the United States and their success with the American dream.

Mrs. HUTCHISON. Mr. President, I ask unanimous consent that I be allowed 5 extra minutes.

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

The Senator is recognized for 10 minutes.

Mrs. HUTCHISON. Thank you, Mr. President.

ON THE 50TH ANNIVERSARY OF THE ALLIED LANDING AT NORMANDY

Mrs. HUTCHISON. Mr. President, I rise to recognize the role of the battleship U.S.S. *Texas* (BB-35) and all of the brave men from my State and from around our Nation who went into harm's way—for freedom's sake—half a century ago.

Fifty years ago yesterday, on June 6, 1944, Gen. Dwight David Eisenhower, Commander in Chief of Allied Forces in Western Europe, sent more than 100,000 men toward the beaches of Normandy, ferried and supported by more than 5,000 Allied ships, more than 1,000 heavy bombers, and 2,000 fighter planes. British and American paratroopers, dropped far from their targeted battle zones due to inclement weather, suffered horrifying casualties but accomplished their vital mission of throwing German expectations and logistics awry. What occurred in the ensuing hours testified to the courage and determination of Allied forces, and to General Eisenhower's brilliant coordination of the air, land, and sea offensive.

The Battleship *Texas*, engaged for several years before Operation Overlord in convoy missions to England, played a crucial role in securing the bitterly contested beachhead at Omaha Beach during the Normandy invasion. At about 4:40 on the morning of the 6th, the battleship arrived some 12,000 yards offshore near Pointe du Hoc. A little more than an hour later, she made her way up the coast, turning her heavy guns inland to stop enemy reinforcements. By midday, the *Texas* had closed in on the beach at about 3,000 yards and had challenged enemy sniper fire and machinegun nests established on the shore. As evening neared, the battleship fired on an enemy anti-aircraft battery west of Vierville.

In the difficult days that followed, the battleship continued to fire on the enemy-held towns of Surrain, Trevieres, and Insigny, withstanding attacks by low-flying German planes. All the while, she succeeded in bombing an enemy mortar battery which had been shelling the beach. In perhaps one of the most heroic of her efforts, the *Texas*, along with the *Arkansas* (BB-33), advanced on the port of Cherbourg. On the morning of June 25, both ships came under fire, and the *Texas* found herself under siege. Relentless enemy gunners killed her helmsman, damaged her fire control tower, and wounded many sailors posted on the navigation bridge. Her commanding officer, Captain Baker, escaped uninjured and cleared the deck. With remarkable tenacity, despite being struck more than 65 times, the battleship's crew continued to deliver fire.

Mr. President, I think all Senators will agree that the officers and crew of the U.S.S. *Texas* displayed great courage in both theaters of the Second World War and their service was consistent with the highest tradition of the U.S. Navy.

Bill Lewis, who now lives in San Antonio, was a 23-year-old squad leader aboard the *Texas*. For him and others, the battleship's prowess at Omaha Beach was commemorated at a ceremony this past weekend at the San Jacinto Battleground State Historical Park in La Porte where the battleship *Texas* is moored today. Navy veteran Beuron Boyd is proud of the *Texas* because it was the first battleship to launch aircraft, and the only surviving battleship to have served in both world wars. He remembers with pride his objective when he boarded the *Texas* in 1943: "The first thing a Texan wants to do is find another Texan."

Texans served with distinction on the ground as well. Fort Worth resident Dwayne Burns was a 19-year-old paratrooper in the 82nd "All American Airborne Division" who made his first combat jump near St. Mere-Eglise. Mr. Burns remembers watching a C-47 crash and turning to prayer for strength. He was among the 28 survivors of his 130-man company. Texan Ernest Raxter of the 101st Airborne Division received a Purple Heart with two Oak Leaf clusters for his participation in the war. At age 72, Mr. Raxter joined a number of veterans who parachuted yesterday into Normandy in commemoration of the anniversary. Also returning to Normandy was Capt. Joe Dawson, who left his hometown of Waco to see combat at Omaha Beach. Captain Dawson has been called by military historians "a symbol of what democracy can do." With initiative, pride, and determination he hit the beaches and led his men through the carnage to begin the momentum that liberated Europe from the clutches of Adolf Hitler.

Lt. Col. James Earl Rudder left Eden, TX, to lead the 2nd Ranger Battalion up the sheer 100-foot cliff to Pointe du Hoc for the first battle of D-day. From the summit, they defeated the Germans who had shelled them from the cliff. Many of the rangers now remember Rudder's courage and compassion, which made him an admirable leader both in battle and in his later responsibilities as mayor of Brady, TX, Texas land commissioner, and finally as the president of Texas A&M University. Gen. Omar Bradley, commander of U.S. forces in Europe, wrote in his biography, "A Soldier's Story," "No soldier in my command has ever been wished a more difficult task than that which befell the 34-year-old commander of this Ranger force, James Earl Rudder." The memory of his inspiration and his leadership survives in the hearts of those who followed him up that cliff on that fateful morning.

All of those who fought in World War II made incredible sacrifices for democracy. They liberated Europe and ensured it would not fall under the fascist yoke.

The beachheads at Normandy might be considered the capstone of what is referred to as the American Century—the acknowledgement of the United States of America as the greatest and most powerful Nation on Earth. But this is not why we were in Europe. What our troops fought and died for, the precious thing they won with their lives on June 6, 1944, at Omaha Beach and in the ensuing months until Hitler's Germany was broken, was liberty and freedom for the world.

Mr. President, it is that legacy, won by the sacrifice of our soldiers, that has been passed down from one generation of Americans to the next since Bunker Hill. We will be judged harshly if we fail to preserve and protect that legacy, or if we fail to pass onto the next generation a full appreciation of "life, liberty and the pursuit of happiness," and the sacrifices that must be made in order to maintain these precious rights for our and future generations.

Thank you, Mr. President.

I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. LIEBERMAN). The absence of a quorum

has been noted. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

Mrs. FEINSTEIN. Mr. President, I ask unanimous consent that I be recognized in morning business for 5 minutes.

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

(The remarks of Mrs. FEINSTEIN pertaining to the introduction of S. 2162 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

ENFORCING OUR BORDERS

Mrs. FEINSTEIN. Mr. President, last weekend, I went on Saturday night and Sunday to the southwest border in California for the third time in the last year. This 14-mile border in San Diego County accounts for 48 percent of all of the arrests nationally that occur along our entire 1,800-mile border.

I have had a particular interest in, and worked last year as a member of the Appropriations Committee alongside Senator DOMENICI and Chairman HOLLINGS, to obtain a much-needed $40 million appropriation dedicated to beefing up border enforcement by adding new Border Patrol agents, fencing, lighting and high-technology equipment.

When I went to the border this last time, I am very proud to say that I saw a transformation taking place. I came away more convinced than ever that we can enforce our borders against illegal immigration if, as a nation, we choose to do so.

I saw lights in place along the 14-mile border, a nearly complete border fence in place with just two small sections left to be built, and—perhaps most reassuringly—40 new Border Patrol agents just graduated from their training program and on the line.

The difference was clear to see. The Border Patrol reports that it has improved its effectiveness by 14 percent. In other words, the fence, the lighting, and new agents have meant that the number of people apprehended has actually decreased. The word is spreading. Border enforcement is beginning to have an impact.

On my previous visit to the border, 2,000 people were apprehended by the Border Patrol in a single Saturday night as they attempted to cross illegally. The Border Patrol told me then that an equal number got through. That means that the Border Patrol previously put its effectiveness at just 50 percent. When I visited again last week, I was told that—with the new resources already in place—the Patrol's effectiveness in the San Diego sector had increased to 60 percent. I am confident that more resources will mean even better enforcement of our border.

INS Commissioner Doris Meissner has indicated that, with the balance of the appropriations that I helped secure for Fiscal Year 1994, 350 new agents will be hired nationally, 300 of those will be deployed in the San Diego Sector. They, and 238 more agents to be hired by October 1, 1994, will be equipped with encrypted radios, 222 new vehicles, 4 "night scopes," and backed by 231 new support personnel. I look forward to again seeing for myself the difference in Border patrol effectiveness that these resources produce and will fight for further funding to push that effectiveness rating as close to 100 percent as possible.

On a related matter, I was accompanied on my latest border visit by the chief of the Criminal Division of the U.S. Attorney's office for the southern district of California. He pointed out a very real problem. When people are apprehended at the border and "repatriated," arrested and returned to Mexico—they are simply taken just over the line and let go. They are not repatriated into the heart of the country. Consequently, they come back sometimes an hour later or try again a day, a week, or a month later. My latest trip has convinced me that this problem also must be addressed.

The fundamental point that I want to make this afternoon is, however, that we can enforce our borders. I now know from what I have seen with my own eyes that strong border enforcement works. Nobody should say that it is an impossible task. We just cannot say that.

I have legislation pending that would expand the Border Patrol by an additional 1,400 agents over the next 2 years. I am hopeful that it will be discussed in the middle of this month by the Senate Judiciary Committee. If that legislation is enacted, Mr. President, I believe that it will help substantially to fully enforce our borders—north, south, east and west. We can do that by adding additional Border Patrol agents where they are needed, fences where fences will work, lighting where lighting is important, infrared scopes where infrared scopes are necessary.

The United States of America, if we have the will to do so, can enforce its borders against illegal immigration. I believe that we must.

I thank you, Mr. President, and yield the floor.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is now closed.

FEDERAL ACQUISITION STREAMLINING ACT OF 1994

The PRESIDING OFFICER. Under the previous order, the Senate turns to S. 1587, the Federal Acquisition Streamlining Act of 1994, which the clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 1587) to revise and streamline the acquisition laws of the Federal Government, and for other purposes.

The Senate proceeded to consider the bill to revise and streamline the acquisition laws of the Federal Government, and for other purposes, which had been reported from the Committee on Governmental Affairs with an amendment to strike out all after the enacting clause and inserting in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Federal Acquisition Streamlining Act of 1994".

SEC. 2. TABLE OF CONTENTS.

The table of contents for this Act is as follows:

TITLE I—CONTRACT FORMATION

Subtitle A—Competition Statutes

PART I—ARMED SERVICES ACQUISITIONS

SUBPART A—COMPETITION REQUIREMENTS

Sec. 1001. References to Federal Acquisition Regulation.
Sec. 1002. Establishment or maintenance of alternative sources of supply.
Sec. 1003. Clarification of approval authority for use of procedures other than full and open competition.
Sec. 1004. Task order contracts for advisory and assistance services.
Sec. 1005. Acquisition of expert services.

SUBPART B—PLANNING, SOLICITATION, EVALUATION, AND AWARD

Sec. 1011. Source selection factors.
Sec. 1012. Solicitation provision regarding evaluation of purchase options.
Sec. 1013. Prompt notice of award.
Sec. 1014. Post-award debriefings.
Sec. 1015. Protest file.
Sec. 1016. Award of costs and fees in agency settlement of protests.
Sec. 1017. Two-phase selection procedures.

SUBPART C—KINDS OF CONTRACTS

Sec. 1021. Secretarial determination regarding use of cost type or incentive contract.
Sec. 1022. Technical and conforming amendments.

SUBPART D—MISCELLANEOUS PROVISIONS FOR THE ENCOURAGEMENT OF COMPETITION

Sec. 1031. Repeal of requirement for annual report by advocates for competition.

PART II—CIVILIAN AGENCY ACQUISITIONS

SUBPART A—COMPETITION REQUIREMENTS

Sec. 1051. References to Federal Acquisition Regulation.
Sec. 1052. Establishment or maintenance of alternative sources of supply.
Sec. 1053. Clarification of approval authority for use of procedures other than full and open competition.
Sec. 1054. Task order contracts for advisory and assistance services.
Sec. 1055. Acquisition of expert services.
Sec. 1056. Continued occupancy of leased space.

SUBPART B—PLANNING, SOLICITATION, EVALUATION, AND AWARD

Sec. 1061. Solicitation, evaluation, and award.
Sec. 1062. Solicitation provision regarding evaluation of purchase options.

Sec. 1063. Prompt notice of award.
Sec. 1064. Post-award debriefings.
Sec. 1065. Protest file.
Sec. 1066. Award of costs and fees in agency settlement of protests.
Sec. 1067. Two-phase selection procedures.

SUBPART C—KINDS OF CONTRACTS

Sec. 1071. Agency head determination regarding use of cost type or incentive contract.
Sec. 1072. Multiyear contracting authority.
Sec. 1073. Severable services contracts crossing fiscal years.
Sec. 1074. Economy Act purchases.

PART III—ACQUISITIONS GENERALLY

Sec. 1091. Policy regarding consideration of contractor past performance.
Sec. 1092. Repeal of requirement for annual report on competition.

Subtitle B—Truth in Negotiations

PART I—ARMED SERVICES ACQUISITIONS

Sec. 1201. Stabilization of dollar threshold of applicability.
Sec. 1202. Exceptions to cost or pricing data requirements.
Sec. 1203. Limitation on authority to require a submission not otherwise required.
Sec. 1204. Additional special rules for commercial items.
Sec. 1205. Right of United States to examine contractor records.
Sec. 1206. Required regulations.
Sec. 1207. Consistency of time references.
Sec. 1208. Exception for transfers between divisions, subsidiaries, and affiliates.
Sec. 1209. Repeal of superseded provision.

PART II—CIVILIAN AGENCY ACQUISITIONS

Sec. 1251. Revision of civilian agency provisions to ensure uniform treatment of cost or pricing data.
Sec. 1252. Repeal of obsolete provision.

Subtitle C—Research and Development

Sec. 1301. Research projects.
Sec. 1302. Elimination of inflexible terminology regarding coordination and communication of defense research activities.

Subtitle D—Procurement Protests

PART I—PROTESTS TO THE COMPTROLLER GENERAL

Sec. 1401. Protest defined.
Sec. 1402. Review of protests and effect on contracts pending decision.
Sec. 1403. Decisions on protests.
Sec. 1404. Regulations.

PART II—PROTESTS IN THE FEDERAL COURTS

Sec. 1421. Nonexclusivity of remedies.
Sec. 1422. Jurisdiction of the United States Court of Federal Claims.

PART III—PROTESTS IN PROCUREMENTS OF AUTOMATIC DATA PROCESSING

Sec. 1431. Revocation of delegations of procurement authority.
Sec. 1432. Authority of the General Services Administration Board of Contract Appeals.
Sec. 1433. Periods for certain actions.
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Sec. 1438. Matters to be covered in regulations.
Sec. 1439. Definitions.

Subtitle E—Definitions and Other Matters

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Sec. 1501. Definitions.
Sec. 1502. Delegation of procurement functions.
Sec. 1503. Determinations and decisions.
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Sec. 1505. Production special tooling and production special test equipment: contract terms and conditions.
Sec. 1506. Regulations for bids.

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TITLE I—CONTRACT FORMATION

Subtitle A—Competition Statutes

PART I—ARMED SERVICES ACQUISITIONS

Subpart A—Competition Requirements

SEC. 1001. REFERENCES TO FEDERAL ACQUISITION REGULATION.

Section 2304 of title 10, United States Code, is amended—

(1) in subsection (a)(1)(A), by striking out "modifications" and all that follows through "note)" and inserting in lieu thereof "Federal Acquisition Regulation"; and

(2) in subsection (g)(1), by striking out "regulations modified" and all that follows through "note)" and inserting in lieu thereof "Federal Acquisition Regulation".

SEC. 1002. ESTABLISHMENT OR MAINTENANCE OF ALTERNATIVE SOURCES OF SUPPLY.

Section 2304(b) of title 10, United States Code, is amended—

(1) in paragraph (1)—

(A) by striking out "or" at the end of subparagraph (B);

(B) by striking out the period at the end of subparagraph (C) and inserting in lieu thereof a semicolon; and

(C) by adding at the end the following new subparagraphs:

"(D) would ensure the continuous availability of a reliable source of supply of such property or service;

"(E) would satisfy projected needs for such property or service determined on the basis of a history of high demand for the property or service; or

"(F) in the case of medical supplies, safety supplies, or emergency supplies, would satisfy a critical need for such supplies.";

(2) by redesignating paragraphs (2) and (3) as paragraphs (3) and (4), respectively;

(3) by inserting after paragraph (1) the following new paragraph (2):

"(2) The determination required of the agency head in paragraph (1) may not be made for a class of purchases or contracts."; and

(4) in paragraph (4), as redesignated by paragraph (2), by striking out "paragraphs (1) and (2)" and inserting in lieu thereof "paragraphs (1) and (3)".

SEC. 1003. CLARIFICATION OF APPROVAL AUTHORITY FOR USE OF PROCEDURES OTHER THAN FULL AND OPEN COMPETITION.

Section 2304(f)(1)(B)(i) of title 10, United States Code, is amended by inserting before the semicolon at the end the following: "or by an official referred to in clause (ii), (iii), or (iv)".

SEC. 1004. TASK ORDER CONTRACTS FOR ADVISORY AND ASSISTANCE SERVICES.

(a) AUTHORITY.—

(1) IN GENERAL.—Chapter 137 of title 10, United States Code, is amended by inserting after section 2304 the following new section:

"§2304a. Task order contracts for advisory and assistance services

"(a) AUTHORITY TO AWARD.—(1) Subject to the requirements of this section, the head of an agency may enter into a contract for advisory and assistance services that does not procure or specify a firm quantity of services (other than a minimum or maximum quantity) and that provides for the issuance of task orders during the specified period of the contract.

"(2) Except as provided in subsection (h), the head of an agency may enter into a contract described in paragraph (1) only under the authority of this section.

"(b) LIMITATION ON CONTRACT PERIOD.—The period of a contract referred to in subsection (a), including all periods of extensions of the contract under options, modifications, or otherwise, may not exceed 5 years unless a longer period is specifically authorized in a law that is applicable to such contract.

"(c) CONTRACT PROCEDURES.—(1) The head of an agency may use procedures other than competitive procedures to enter into a contract referred to in subsection (a) only if an exception in subsection (c) of section 2304 of this title applies to the contract and the use of such procedures is approved in accordance with subsection (f) of such section.

"(2) The notice required by section 18 of the Office of Federal Procurement Policy Act (41 U.S.C. 416) and section 8(e) of the Small Business Act (15 U.S.C. 637(e)) shall reasonably and fairly describe the general scope, magnitude, and duration of the proposed contract in a manner that would reasonably enable a potential offeror to decide whether to request the solicitation and consider submitting an offer.

"(3) The solicitation shall include the following:

"(A) The period of the contract, including the number of options to extend the contract and the period for which the contract may be extended under each option, if any.

"(B) The maximum quantity or dollar value of services to be procured under the contract.

"(C) A statement of work, specifications, or other description that reasonably describes the general scope, nature, complexity, and purposes of the services to be procured under the contract.

"(4)(A) The head of an agency may, on the basis of one solicitation, award separate contracts under this section for the same or similar services to two or more sources if the solicitation states that the head of the agency has the option to do so.

"(B) If, in the case of a contract for advisory and assistance services to be entered into under the authority of this section, the contract period is to exceed 3 years and the contract amount is estimated to exceed $10,000,000 (including all options), the solicitation shall—

"(i) provide for a multiple award authorized under subparagraph (A); and

"(ii) include a statement that the head of the agency may also elect to award only one contract if the head of the agency determines in writing that only one of the offerers is capable of providing the services required at the level of quality required.

"(C) Subparagraph (B) does not apply in the case of a solicitation for which the head of an agency determines in writing that, because the services required under the contract are unique or highly specialized, it is not practicable to award more than one contract.

"(5) A contract referred to in subsection (a) shall contain the same information that is required by paragraph (3) to be included in the solicitation of offers for that contract.

"(d) ORDER PROCEDURES.—(1) The following actions are not required for a task order issued under a contract entered into in accordance with this section:

"(A) A separate notice for such order under section 18 of the Office of Federal Procurement Policy Act (41 U.S.C. 416) or section 8(e) of the Small Business Act (15 U.S.C. 637(e)).

"(B) Except as provided in paragraph (2), a competition (or a waiver of competition approved in accordance with section 2304(f) of this title) that is separate from that used for entering into the contract.

"(2)(A) When multiple contracts are awarded pursuant to subsection (c)(4), all contractors awarded such contracts shall be provided a fair opportunity to be considered, pursuant to procedures set forth in the contracts, for each task order in excess of $2,500 that is to be issued under any of the contracts unless—

"(i) the agency's need for the services ordered is of such unusual urgency that competition would result in unacceptable delays in fulfilling the agency's needs;

"(ii) only one such contractor is capable of providing the services required at the level of quality required because the services ordered are unique or so highly specialized;

"(iii) the task order should be issued on a sole-source basis in the interest of economy and efficiency because it is a logical follow-on to a task order already issued on a competitive basis; or

"(iv) the order must be placed with a particular contractor in order to satisfy a minimum guarantee.

"(B) When a task order is issued in accordance with subparagraph (A), the order shall include a statement of work that clearly specifies all tasks to be performed under the order.

"(3) A protest is not authorized in connection with the issuance or proposed issuance of a task order except for a protest on the ground that the order increases the scope, period, or maximum value of the contract under which the order is issued.

"(e) INCREASES IN SCOPE, PERIOD, OR MAXIMUM VALUE OF CONTRACT.—(1) A task order may not increase the scope, period, or maximum value of the contract under which the order is issued. The scope, period, or maximum value of the contract may be increased only by modification of the contract.

"(2) Unless use of procedures other than competitive procedures is authorized by an exception in subsection (c) of section 2304 of this title and approved in accordance with subsection (f) of such section, competitive procedures shall be used for making such a modification.

"(3) Notice regarding the modification shall be provided in accordance with section 18 of the Office of Federal Procurement Policy Act (41 U.S.C. 416) and section 8(e) of the Small Business Act (15 U.S.C. 637(e)).

"(4)(A) Notwithstanding the limitation on the contract period set forth in subsection (b) or in a solicitation or contract pursuant to subsection (c), a contract entered into by the head of an agency under this section may be extended on a sole-source basis for a period not exceeding 6 months if the agency head determines that—

"(i) the award of a follow-on contract has been delayed by circumstances that were not reasonably foreseeable at the time the initial contract was entered into; and

"(ii) the extension is necessary in order to ensure continuity of the receipt of services pending the award of, and commencement of performance under, the follow-on contract.

"(B) A contract may be extended under the authority of subparagraph (A) only once and only in accordance with the limitations and requirements of this subsection.

"(f) TASK ORDER OMBUDSMAN.—Each head of an agency who awards multiple contracts pursuant to subsection (c)(4) shall appoint or designate a task order ombudsman who shall be responsible for reviewing complaints from the contractors on such contracts and ensuring that all of the contractors are afforded a fair opportunity to be considered for task orders when required under subsection (d)(2). The task order ombudsman shall be a senior agency official who is independent of the contracting officer for the contracts and may be the agency's competition advocate.

"(g) INAPPLICABILITY TO CERTAIN CONTRACTS.—This section does not apply to a contract for the acquisition of property or services that includes acquisition of advisory and assistance services if the head of an agency entering into such contract determines that, under the contract, advisory and assistance services are necessarily incident to, and not a significant component of, the contract.

"(h) RELATIONSHIP TO OTHER CONTRACTING AUTHORITY.—Nothing in this section may be construed to limit the authority of the head of an agency to enter into single or multiple task order contracts, or single or multiple delivery order contracts, for property or services (other than advisory and assistance services) under other provisions of this chapter or under any other provision of law.

"(i) ADVISORY AND ASSISTANCE SERVICES DEFINED.—In this section, the term 'advisory and assistance services' has the meaning given such term in section 1105(g) of title 31.".

(2) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 2304 the following new item:

"2304a. Task order contracts for advisory and assistance services.".

(b) REPEAL OF SUPERSEDED PROVISION.—Section 2304 of title 10, United States Code, is amended by striking out subsection (j).

(c) CONFORMING AMENDMENT FOR PROFESSIONAL AND TECHNICAL SERVICES.—Section 2331 of title 10, United States Code, is amended by striking out subsection (c).

SEC. 1005. ACQUISITION OF EXPERT SERVICES.

Section 2304(c)(3) of title 10, United States Code, is amended—

(1) by striking out "or (B)" and inserting in lieu thereof "(B)"; and

(2) by inserting before the semicolon at the end the following: ", or (C) to procure the services of an expert for use, in any litigation or dispute (including any reasonably foreseeable litigation or dispute) involving the Federal Government, in any trial, hearing, or proceeding before any court, administrative tribunal, or agency, or in any part of an alternative dispute resolution process, whether or not the expert is expected to testify".

Subpart B—Planning, Solicitation, Evaluation, and Award

SEC. 1011. SOURCE SELECTION FACTORS.

Section 2305(a) of title 10, United States Code, is amended—

(1) in paragraph (2)—

(A) in subparagraph (A)(i), by striking out "nonprice-related factors)" and inserting in lieu thereof "nonprice-related factors and subfactors)"; and

(B) in subparagraph (B)(ii), by striking out subclause (I) and inserting in lieu thereof the following:

"(I) either a statement that the proposals are intended to be evaluated with, and award made after, discussions with the offerors, or a statement that the proposals are intended to be evaluated, and award made, without discussions with the offerors (other than discussions conducted for the purpose of minor clarification) unless discussions are determined to be necessary; and"; and

(2) by striking out paragraph (3) and inserting in lieu thereof the following:

"(3)(A) In prescribing the evaluation factors to be included in each solicitation for competitive proposals, the head of an agency—

"(i) shall clearly establish the relative importance assigned to the evaluation factors and subfactors, including the quality of the product or services to be provided (including technical capability, management capability, prior experience, and past performance of the offeror);

"(ii) shall include cost or price to the Government as an evaluation factor that must be considered in the evaluation of proposals; and

"(iii) shall disclose to offerors whether all evaluation factors other than cost or price, when combined, are—

"(I) significantly more important than cost or price;

"(II) approximately equal in importance to cost or price; or

"(III) significantly less important than cost or price.

"(B) Nothing in this paragraph prohibits an agency from—

"(i) providing additional information in a solicitation, including numeric weights for all evaluation factors; or

"(ii) stating in a solicitation that award will be made to the offeror that meets the solicitation's mandatory requirements at the lowest cost or price.".

SEC. 1012. SOLICITATION PROVISION REGARDING EVALUATION OF PURCHASE OPTIONS.

(a) OPTIONS FOR ADDITIONAL PURCHASES.—Subsection (a) of section 2305 of title 10, United States Code, as amended by section 1011, is further amended by adding at the end the following new paragraph:

"(4) The head of an agency, in issuing a solicitation for a contract to be awarded using sealed bid procedures, may not include in such solicitation a clause providing for the evaluation of prices for options to purchase additional property or services under the contract unless the head of the agency has determined that there is a reasonable likelihood that the options will be exercised.".

(b) REPEAL OF SUPERSEDED PROVISION.—Section 2301(a) of such title is amended—

(1) by striking out paragraph (7);

(2) by inserting "and" at the end of paragraph (5); and

(3) by striking out "; and" at the end of paragraph (6) and inserting in lieu thereof a period.

SEC. 1013. PROMPT NOTICE OF AWARD.

(a) SEALED BID PROCEDURES.—Section 2305(b)(3) of title 10, United States Code, is amended by adding at the end the following: "As soon as practicable after the date of contract award, the head of the agency shall, in accordance with procedures prescribed in the Federal Acquisition Regulation, notify all offerors not awarded the contract that the contract has been awarded.".

(b) COMPETITIVE PROPOSALS PROCEDURES.—Section 2305(b)(4)(B) of title 10, United States Code, is amended in the second sentence by striking out "source and shall promptly notify" and inserting in lieu thereof "source. As soon as practicable after the date of contract award, the head of the agency shall, in accordance with procedures prescribed in the Federal Acquisition Regulation, notify".

SEC. 1014. POST-AWARD DEBRIEFINGS.

Section 2305(b) of title 10, United States Code, is amended—

(1) by redesignating paragraph (5) as paragraph (6); and

(2) by inserting after paragraph (4) the following new paragraph (5):

"(5)(A) When a contract is awarded by the head of an agency on the basis of competitive proposals, an unsuccessful offeror, upon written request received by the agency within 3 days

after the date on which the unsuccessful offeror receives the notification of the contract award, shall be debriefed and furnished the basis for the selection decision and contract award. An employee of the agency shall debrief the offeror promptly after receipt of the request by the agency.

"(B) The debriefing shall include, at a minimum—

"(i) the agency's evaluation of the significant weak or deficient factors in the offeror's offer;

"(ii) the overall evaluated cost and technical rating of the offer of the contractor awarded the contract and the overall evaluated cost and technical rating of the offer of the debriefed offeror;

"(iii) the overall ranking of all offers;

"(iv) a summary of the rationale for the award;

"(v) in the case of a proposal that incorporates equipment that is a commercial item, the make and model of the item incorporated in the offer of the contractor awarded the contract; and

"(vi) reasonable responses to questions posed by the debriefed offeror as to whether source selection procedures set forth in the solicitation, applicable regulations, and other applicable authorities were followed by the agency.

"(C) The debriefing may not include point-by-point comparisons of the debriefed offeror's offer with other offers and may not disclose any information that is exempt from disclosure under section 552 of title 5, including information relating to—

"(i) trade secrets;

"(ii) privileged or confidential manufacturing processes and techniques; and

"(iii) commercial and financial information that is privileged or confidential, including cost breakdowns, profit, indirect cost rates, and similar information.

"(D) Each solicitation for competitive proposals shall include a statement that information described in subparagraph (B) may be disclosed in post-award debriefings.

"(E) If, within one year after the date of the contract award and as a result of a successful procurement protest or otherwise, the agency seeks to fulfill the requirement under the contract either on the basis of a new solicitation of offers or on the basis of new best and final offers requested for that contract, the agency shall make available to all offerors—

"(i) the information provided in debriefings under this paragraph regarding the offer of the contractor awarded the contract; and

"(ii) the comparable debriefing information that was prepared with respect to the original offerors.

"(F) The contracting officer shall include a summary of the debriefing in the contract file.".

SEC. 1015. PROTEST FILE.

Section 2305 of title 10, United States Code, is amended by adding at the end the following:

"(e)(1) If, in the case of a solicitation for a contract issued by, or an award or proposed award of a contract by, the head of an agency, a protest is filed pursuant to the procedures in subchapter V of chapter 35 of title 31 and an actual or prospective offeror so requests, a file of the protest shall be established by the procuring activity and reasonable access shall be provided to actual or prospective offerors.

"(2) Information exempt from disclosure under the section 552 of title 5 may be redacted in a file established pursuant to paragraph (1) unless an applicable protective order provides otherwise.

"(3) Regulations implementing this subsection shall be consistent with the regulations regarding the preparation and submission of an agency's protest file (the so-called 'rule 4 file') for protests to the General Services Board of Contract Appeals under section 111 of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 759).".

SEC. 1016. AWARD OF COSTS AND FEES IN AGENCY SETTLEMENT OF PROTESTS.

Section 2305 of title 10, United States Code, as amended by section 1015, is further amended by adding at the end the following new subsection:

"(f) If, in connection with a protest, the head of an agency determines that a solicitation, proposed award, or award does not comply with the requirements of law or regulation, the head of the agency may take—

"(1) any action set out in subparagraphs (A) through (F) of subsection (b)(1) of section 3554 of title 31; and

"(2) may pay costs described in paragraph (1) of section 3554(c) of title 31 within the limits referred to in paragraph (2) of such section.".

SEC. 1017. TWO-PHASE SELECTION PROCEDURES.

(a) PROCEDURES AUTHORIZED.—Chapter 137 of title 10, United States Code, is amended by inserting after section 2305 the following new section:

"§2305a. Two-phase selection procedures

"(a) PROCEDURES AUTHORIZED.—The head of an agency may use two-phase selection procedures for entering into a contract for the acquisition of property or services when the head of the agency determines that three or more offers will be received for such contract, substantial design work must be performed before an offeror can develop a price or cost proposal for such contract, and the offerors will incur a substantial amount of expenses in preparing the offers.

"(b) PROCEDURES DESCRIBED.—Two-phase selection procedures consist of the following:

"(1) The head of the agency solicits proposals that—

"(A) include information on the offerors'—

"(i) technical approach; and

"(ii) technical qualifications; and

"(B) do not include—

"(i) detailed design information; or

"(ii) cost or price information.

"(2) The head of the agency evaluates the proposals on the basis of evaluation criteria set forth in the solicitation, except that the head of the agency does not consider cost-related or price-related evaluation factors.

"(3) The head of the agency selects at least three offerors as the most highly qualified to provide the property or services under the contract and requests the selected offerors to submit competitive proposals that include cost or price information.

"(4) The head of the agency awards the contract in accordance with section 2305(b)(4) of this title.

"(c) RESOURCE COMPARISON CRITERION REQUIRED.—In using two-phase selection procedures for entering into a contract, the head of the agency shall establish a resource criterion or a financial criterion applicable to the contract in order to provide a consistent basis for comparing the offerors and their proposals.

"(d) TWO-PHASE SELECTION PROCEDURES DEFINED.—In this section, the term 'two-phase selection procedures' means procedures described in subsection (b) that are used for the selection of a contractor on the basis of cost or price and other evaluation criteria to provide property or services in accordance with the provisions of a contract which requires the contractor to design the property to be acquired under the contract and produce or construct such property.

"(e) APPLICABILITY ONLY TO DEPARTMENT OF DEFENSE.—This section does not apply to the Coast Guard or the National Aeronautics and Space Administration.".

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 2305 the following:

"2305a. Two-phase selection procedures.".

Subpart C—Kinds of Contracts

SEC. 1021. SECRETARIAL DETERMINATION REGARDING USE OF COST TYPE OR INCENTIVE CONTRACT.

Subsection (c) of section 2306 of title 10, United States Code, is repealed.

SEC. 1022. TECHNICAL AND CONFORMING AMENDMENTS.

(a) REPEAL OF UNNECESSARY CROSS REFERENCE.—Subsection (f) of section 2306 of title 10, United States Code, is repealed.

(b) CONFORMING AMENDMENT.—Such section is amended by redesignating subsections (d), (e), (g), and (h) as subsections (c), (d), (e), and (f), respectively.

(c) NEUTERIZATION OF REFERENCE.—Subsection (e)(1) of such section, as redesignated by subsection (b), is amended in the matter above clause (i) by striking out "whenever he finds" and inserting in lieu thereof "whenever the head of the agency finds".

Subpart D—Miscellaneous Provisions for the Encouragement of Competition

SEC. 1031. REPEAL OF REQUIREMENT FOR ANNUAL REPORT BY ADVOCATES FOR COMPETITION.

Subsection (c) of section 2318 of title 10, United States Code, is repealed.

PART II—CIVILIAN AGENCY ACQUISITIONS

Subpart A—Competition Requirements

SEC. 1051. REFERENCES TO FEDERAL ACQUISITION REGULATION.

Section 303 of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253) is amended—

(1) in subsection (a)(1)(A), by striking out "modifications" and all that follows through "of 1984" and inserting in lieu thereof "Federal Acquisition Regulation"; and

(2) in subsection (g)(1), by striking out "regulations modified" and all that follows through "of 1984," and inserting in lieu thereof "Federal Acquisition Regulation".

SEC. 1052. ESTABLISHMENT OR MAINTENANCE OF ALTERNATIVE SOURCES OF SUPPLY.

Section 303(b) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253(b)) is amended—

(1) in paragraph (1)—

(A) by striking out "or" at the end of subparagraph (B);

(B) by striking out the period at the end of subparagraph (C) and inserting in lieu thereof a semicolon; and

(C) by adding at the end the following new subparagraphs:

"(D) would ensure the continuous availability of a reliable source of supply of such property or service;

"(E) would satisfy projected needs for such property or service determined on the basis of a history of high demand for the property or service; or

"(F) in the case of medical supplies, safety supplies, or emergency supplies, would satisfy a critical need for such supplies.";

(2) by redesignating paragraphs (2) and (3) as paragraphs (3) and (4), respectively;

(3) by inserting after paragraph (1) the following new paragraph (2):

"(2) The determination required of the agency head in paragraph (1) may not be made for a class of purchases or contracts."; and

(4) in paragraph (4), as redesignated by paragraph (2), by striking out "paragraphs (1) and (2)" and inserting in lieu thereof "paragraphs (1) and (3)".

SEC. 1053. CLARIFICATION OF APPROVAL AUTHORITY FOR USE OF PROCEDURES OTHER THAN FULL AND OPEN COMPETITION.

Section 303(f)(1)(B)(i) of the Federal Property and Administrative Services Act of 1949 (41

U.S.C. 253(f)(1)(B)(i)) is amended by inserting before the semicolon at the end the following: "or by an official referred to in clause (ii), (iii), or (iv)".

SEC. 1054. TASK ORDER CONTRACTS FOR ADVISORY AND ASSISTANCE SERVICES.

(a) AUTHORITY.—Title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.) is amended by inserting after section 303G the following new section:

"TASK ORDER CONTRACTS FOR ADVISORY AND ASSISTANCE SERVICES

"SEC. 303H. (a) AUTHORITY TO AWARD.—(1) Subject to the requirements of this section, the head of an executive agency may enter into a contract for advisory and assistance services that does not procure or specify a firm quantity of services (other than a minimum or maximum quantity) and that provides for the issuance of task orders during the specified period of the contract.

"(2) Except as provided in subsection (h), the agency head may enter into a contract described in paragraph (1) only under the authority of this section.

"(b) LIMITATION ON CONTRACT PERIOD.—The period of a contract referred to in subsection (a), including all periods of extensions of the contract under options, modifications, or otherwise, may not exceed 5 years unless a longer period is specifically authorized in a law that is applicable to such contract.

"(c) CONTRACT PROCEDURES.—(1) An agency head may use procedures other than competitive procedures to enter into a contract referred to in subsection (a) only if an exception in subsection (c) of section 303 applies to the contract and the use of such procedures is approved in accordance with subsection (f) of such section.

"(2) The notice required by section 18 of the Office of Federal Procurement Policy Act (41 U.S.C. 416) and section 8(e) of the Small Business Act (15 U.S.C. 637(e)) shall reasonably and fairly describe the general scope, magnitude, and duration of the proposed contract in a manner that would reasonably enable a potential offeror to decide whether to request the solicitation and consider submitting an offer.

"(3) The solicitation shall include the following:

"(A) The period of the contract, including the number of options to extend the contract and the period for which the contract may be extended under each option, if any.

"(B) The maximum quantity or dollar value of the services to be procured under the contract.

"(C) A statement of work, specifications, or other description that reasonably describes the general scope, nature, complexity, and purposes of the services to be procured under the contract.

"(4)(A) An agency head may, on the basis of one solicitation, award separate contracts under this section for the same or similar services to two or more sources if the solicitation states that the agency head has the option to do so.

"(B) If, in the case of a contract for advisory and assistance services to be entered into under the authority of this section, the contract period is to exceed 3 years and the contract amount is estimated to exceed $10,000,000 (including all options), the solicitation shall—

"(i) provide for a multiple award authorized under subparagraph (A); and

"(ii) include a statement that the agency head may also elect to award only one contract if the agency head determines in writing that only one of the offerers is capable of providing the services required at the level of quality required.

"(C) Subparagraph (B) does not apply in the case of a solicitation for which the agency head determines in writing that, because the services required under the contract are unique or highly specialized, it is not practicable to award more than one contract.

"(5) A contract referred to in subsection (a) shall contain the same information that is required by paragraph (3) to be included in the solicitation of offers for that contract.

"(d) ORDER PROCEDURES.—(1) The following actions are not required for a task order issued under a contract entered into in accordance with this section:

"(A) A separate notice for such order under section 18 of the Office of Federal Procurement Policy Act (41 U.S.C. 416) or section 8(e) of the Small Business Act (15 U.S.C. 637(e)).

"(B) Except as provided in paragraph (2), a competition (or a waiver of competition approved in accordance with section 303(f)) that is separate from that used for entering into the contract.

"(2)(A) When multiple contracts are awarded pursuant to subsection (c)(4), all contractors awarded such contracts shall be provided a fair opportunity to be considered, pursuant to procedures set forth in the contracts, for each task order in excess of $2,500 that is to be issued under any of the contracts unless—

"(i) the agency's need for the services ordered is of such unusual urgency that competition would result in unacceptable delays in fulfilling the agency's needs;

"(ii) only one such contractor is capable of providing the services required at the level of quality required because the services ordered are unique or highly specialized;

"(iii) the task order should be issued on a sole-source basis in the interest of economy and efficiency because it is a logical follow-on to a task order already issued on a competitive basis; or

"(iv) the order must be placed with a particular contractor in order to satisfy a minimum guarantee.

"(B) When a task order is issued in accordance with subparagraph (A), the order shall include a statement of work that clearly specifies all tasks to be performed under the order.

"(3) A protest is not authorized in connection with the issuance or proposed issuance of a task order except for a protest on the ground that the order increases the scope, period, or maximum value of the contract under which the order is issued.

"(e) INCREASES IN SCOPE, PERIOD, OR MAXIMUM VALUE OF CONTRACT.—(1) A task order may not increase the scope, period, or maximum value of the contract under which the order is issued. The scope, period, or maximum value of the contract may be increased only by modification of the contract.

"(2) Unless use of procedures other than competitive procedures is authorized by an exception in subsection (c) of section 303 and approved in accordance with subsection (f) of such section, competitive procedures shall be used for making such a modification.

"(3) Notice regarding the modification shall be provided in accordance with section 18 of the Office of Federal Procurement Policy Act (41 U.S.C. 416) and section 8(e) of the Small Business Act (15 U.S.C. 637(e)).

"(4)(A) Notwithstanding the limitation on the contract period set forth in subsection (b) or in a solicitation or contract pursuant to subsection (c), a contract entered into by the head of an agency under this section may be extended on a sole-source basis for a period not exceeding 6 months if the agency head determines that—

"(i) the award of a follow-on contract has been delayed by circumstances that were not reasonably foreseeable at the time the initial contract was entered into; and

"(ii) the extension is necessary in order to ensure continuity of the receipt of services pending the award of, and commencement of performance under, the follow-on contract.

"(B) A contract may be extended under the authority of subparagraph (A) only once and only in accordance with the limitations and requirements of this subsection.

"(f) TASK ORDER OMBUDSMAN.—Each agency head who awards multiple contracts pursuant to subsection (c)(4) shall appoint or designate a task order ombudsman who shall be responsible for reviewing complaints from the contractors on such contracts and ensuring that all of the contractors are afforded a fair opportunity to be considered for task orders when required under subsection (d)(2). The task order ombudsman shall be a senior agency official who is independent of the contracting officer for the contracts and may be the agency's competition advocate.

"(g) INAPPLICABILITY TO CERTAIN CONTRACTS.—This section does not apply to a contract for the acquisition of property or services that includes acquisition of advisory and assistance services if the agency head entering into such contract determines that, under the contract, advisory and assistance services are necessarily incident to, and not a significant component of, the contract.

"(h) RELATIONSHIP TO OTHER CONTRACTING AUTHORITY.—Nothing in this section may be construed to limit the authority of the head of an agency to enter into single or multiple task order contracts, or single or multiple delivery order contracts, for goods or services (other than advisory and assistance services) under other provisions of this title or under any other provision of law.

"(i) ADVISORY AND ASSISTANCE SERVICES DEFINED.—In this section, the term 'advisory and assistance services' has the meaning given such term in section 1105(g) of title 31, United States Code.".

(b) CLERICAL AMENDMENT.—The table of contents in the first section is amended by inserting after the item relating to section 303G the following new item:

"Sec. 303H. Task order contracts for advisory and assistance services.".

SEC. 1055. ACQUISITION OF EXPERT SERVICES.

(a) EXCEPTION TO REQUIREMENT FOR USE OF COMPETITIVE PROCEDURES.—Section 303(c)(3) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253(c)) is amended—

(1) by striking out "or (B)" and inserting in lieu thereof "(B)"; and

(2) by inserting before the semicolon at the end the following: ", or (C) to procure the services of an expert for use, in any litigation or dispute (including any reasonably foreseeable litigation or dispute) involving the Federal Government, in any trial, hearing, or proceeding before any court, administrative tribunal, or agency, or in any part of an alternative dispute resolution process, whether or not the expert is expected to testify".

(b) PROCUREMENT NOTICE.—

(1) AMENDMENT OF OFFICE OF FEDERAL PROCUREMENT POLICY ACT.—Section 18(c) of the Office of Federal Procurement Policy Act (41 U.S.C. 416(c)) is amended—

(A) by striking out "or" at the end of subparagraph (D);

(B) by striking out the period at the end of subparagraph (E) and inserting in lieu thereof "; or"; and

(C) by adding at the end the following:

"(F) the procurement is for the services of an expert for use in any litigation or dispute (including any reasonably foreseeable litigation or dispute) involving the Federal Government in any trial, hearing, or proceeding before any court, administrative tribunal, or agency, or in any part of an alternative dispute resolution process, whether or not the expert is expected to testify.".

(2) AMENDMENT OF SMALL BUSINESS ACT.—Section 8(g) of the Small Business Act (15 U.S.C. 637(c)) is amended—

(A) by striking out "or" at the end of subparagraph (D);

(B) by striking out the period at the end of subparagraph (E) and inserting in lieu thereof "; or"; and

(C) by adding at the end the following:

"(F) the procurement is for the services of an expert for use in any litigation or dispute (including preparation for any foreseeable litigation or dispute) that involves or could involve the Federal Government in any trial, hearing, or proceeding before any court, administrative tribunal, or agency, or in any part of an alternative dispute resolution process, whether or not the expert is expected to testify.".

(c) REPEAL OF AMENDMENTS TO UNCODIFIED TITLE.—The following provisions of law are repealed:

(1) Section 532 of Public Law 101–509 (104 Stat. 1470) and the provision of law set out in quotes in that section.

(2) Section 529 of Public Law 102–393 (106 Stat. 1761) and the matters inserted and added by that section.

SEC. 1056. CONTINUED OCCUPANCY OF LEASED SPACE.

Section 303(d) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253(d)) is amended—

(1) by redesignating paragraph (2) as paragraph (3); and

(2) by inserting after paragraph (1) the following new paragraph (2):

"(2)(A) For the purposes of applying subsection (c)(1) in the case of a follow-on lease to be entered into for the purpose of providing for continued occupancy of particular space in leased real property by a Federal agency, space may be treated as being available only from the lessor of such space and may be acquired through the use of procedures other than competitive procedures (without the justification otherwise required by subsection (f)) if a written determination is made by the contracting officer that—

"(i) the occupying agency has a continuing need for the space;

"(ii) the space meets the needs of the agency; and

"(iii) the lessor is willing to continue to provide the space at a fair market price determined by the contracting officer on the basis of a market survey or an appraisal conducted in accordance with generally accepted real property appraisal standards.

"(B) The authority under subparagraph (A) to use procedures other than competitive procedures to enter into a follow-on lease may be exercised not more than once to provide for continued occupancy of particular space in real property by a particular Federal agency. The period of such follow-on lease may not exceed 5 years.

"(C) Nothing in this paragraph may be construed to prohibit the use of procedures other than competitive procedures to enter into a follow-on lease of real property for continued occupancy of particular space in real property by a Federal agency when an exception set forth in subsection (c) applies and the use of such procedures is justified and approved in accordance with subsection (f).".

Subpart B—Planning, Solicitation, Evaluation, and Award

SEC. 1061. SOLICITATION, EVALUATION, AND AWARD.

(a) CONTENT OF SOLICITATION.—Section 303A of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253a) is amended—

(1) in subsection (b)(1)(A)—

(A) by inserting "and significant subfactors" after "all significant factors"; and

(B) by striking out "(including price)" and inserting "(including cost or price, cost-related or price-related factors and subfactors, and noncost-related or nonprice-related factors and subfactors)";

(2) in subsection (b)(1)(B), by inserting "and subfactors" after "factors";

(3) in subsection (b)(2)(B), by striking out clause (i) and inserting in lieu thereof the following:

"(i) either a statement that the proposals are intended to be evaluated with, and award made after, discussions with the offerors, or a statement that the proposals are intended to be evaluated, and award made, without discussions with the offerors (other than discussions conducted for the purpose of minor clarification) unless discussions are determined to be necessary; and"; and

(4) by adding at the end the following new subsection:

"(c)(1) In prescribing the evaluation factors to be included in each solicitation for competitive proposals, an agency head—

"(A) shall clearly establish the relative importance assigned to the evaluation factors and subfactors, including the quality of the product or services to be provided (including technical capability, management capability, prior experience, and past performance of the offeror);

"(B) shall include cost or price to the Government as an evaluation factor that must be considered in the evaluation of proposals; and

"(C) shall disclose to offerors whether all evaluation factors other than cost or price, when combined, are—

"(i) significantly more important than cost or price;

"(ii) approximately equal in importance to cost or price; or

"(iii) significantly less important than cost or price.

"(2) Nothing in this subsection prohibits an agency from—

"(A) providing additional information in a solicitation, including numeric weights for all evaluation factors; or

"(B) stating in a solicitation that award will be made to the offeror that meets the solicitation's mandatory requirements at the lowest price or cost.".

(b) EVALUATION AND AWARD.—Section 303B of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253b) is amended—

(1) in subsection (a), by inserting ", and award a contract," after "competitive proposals";

(2) in subsection (c), by inserting "in accordance with subsection (a)" in the second sentence after "shall evaluate the bids"; and

(3) in subsection (d)—

(A) by striking out paragraph (1) and inserting in lieu thereof the following:

"(1) An agency head shall evaluate competitive proposals in accordance with subsection (a) and may award a contract—

"(A) after discussions with the offerors, provided that written or oral discussions have been conducted with all responsible offerors who submit proposals within the competitive range; or

"(B) based on the proposals received and without discussions with the offerors (other than discussions conducted for the purpose of minor clarification), provided that, as required by section 303A(b)(2)(B)(i), the solicitation included a statement that proposals are intended to be evaluated, and award made, without discussions, unless discussions are determined to be necessary.";

(B) by striking out paragraphs (2) and (3) and by redesignating paragraph (4) as paragraph (2); and

(C) in paragraph (2), as redesignated by subparagraph (B), by inserting "cost or" before "price" in the first sentence.

(c) APPLICABILITY.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to—

(A) solicitations for sealed bids or competitive proposals issued after the end of the 180-day period beginning on the date of the enactment of this Act; and

(B) contracts awarded pursuant to those solicitations.

(2) AUTHORITY TO APPLY AMENDMENTS EARLY.—The head of an executive agency may apply the amendments made by this section to solicitations issued before the end of the period referred to in paragraph (1). The head of the executive agency shall publish in the Federal Register notice of any such earlier date of application at least 10 days before that date.

SEC. 1062. SOLICITATION PROVISION REGARDING EVALUATION OF PURCHASE OPTIONS.

Section 303A of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253a), as amended by section 1061(a)(4), is further amended by adding at the end the following new subsection:

"(d) An agency head, in issuing a solicitation for a contract to be awarded using sealed bid procedures, may not include in such solicitation a clause providing for the evaluation of prices for options to purchase additional property or services under the contract unless the agency head has determined that there is a reasonable likelihood that the options will be exercised.".

SEC. 1063. PROMPT NOTICE OF AWARD.

(a) SEALED BID PROCEDURES.—Subsection (c) of section 303B of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253b) is amended by adding at the end the following: "As soon as practicable after the date of contract award, the agency head shall, in accordance with procedures prescribed in the Federal Acquisition Regulation, notify all offerors not awarded the contract that the contract has been awarded.".

(b) COMPETITIVE PROPOSALS PROCEDURES.—Paragraph (2) of section 303B(d) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253b(d)), as redesignated by section 1061(b)(3)(B), is amended in the second sentence by striking out "source and shall promptly notify" and inserting in lieu thereof "source. As soon as practicable after the date of contract award, the agency head shall, in accordance with procedures prescribed in the Federal Acquisition Regulation, notify".

SEC. 1064. POST-AWARD DEBRIEFINGS.

Section 303B of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253b) is amended—

(1) by redesignating subsections (e) and (f) as subsections (f) and (g), respectively; and

(2) by inserting after subsection (d) the following new subsection (e):

"(e)(1) When a contract is awarded by the head of an executive agency on the basis of competitive proposals, an unsuccessful offeror, upon written request received by the agency within 3 days after the date on which the unsuccessful offeror receives the notification of the contract award, shall be debriefed and furnished the basis for the selection decision and contract award. An employee of the executive agency shall debrief the offeror promptly after receipt of the request by the agency.

"(2) The debriefing shall include, at a minimum—

"(A) the executive agency's evaluation of the significant weak or deficient factors in the offeror's offer;

"(B) the overall evaluated cost and technical rating of the offer of the contractor awarded the contract and the overall evaluated cost and technical rating of the offer of the debriefed offeror;

"(C) the overall ranking of all offers;

"(D) a summary of the rationale for the award;

"(E) in the case of a proposal that incorporates equipment that is a commercial item, the make and model of the item incorporated in the offer of the contractor awarded the contract; and

"(F) reasonable responses to questions posed by the debriefed offeror as to whether source selection procedures set forth in the solicitation, applicable regulations, and other applicable authorities were followed by the executive agency.

"(3) The debriefing may not include point-by-point comparisons of the debriefed offeror's offer with other offers and may not disclose any information that is exempt from disclosure under section 552 of title 5, United States Code, including information relating to—

"(A) trade secrets;

"(B) privileged or confidential manufacturing processes and techniques; and

"(C) commercial and financial information that is privileged or confidential, including cost breakdowns, profit, indirect cost rates, and similar information.

"(4) Each solicitation for competitive proposals shall include a statement that information described in paragraph (2) may be disclosed in post-award debriefings.

"(5) If, within one year after the date of the contract award and as a result of a successful procurement protest or otherwise, the executive agency seeks to fulfill the requirement under the contract either on the basis of a new solicitation of offers or on the basis of new best and final offers requested for that contract, the agency head shall make available to all offerors—

"(A) the information provided in debriefings under this subsection regarding the offer of the contractor awarded the contract; and

"(B) the comparable debriefing information that was prepared with respect to the original offerors.

"(6) The contracting officer shall include a summary of the debriefing in the contract file.".

SEC. 1065. PROTEST FILE.

Section 303B of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253b), as amended by section 1064(1), is further amended by adding at the end the following:

"(h)(1) If, in the case of a solicitation for a contract issued by, or an award or proposed award of a contract by, an agency head, a protest is filed pursuant to the procedures in subchapter V of chapter 35 of title 31, United States Code, and an actual or prospective offeror so requests, a file of the protest shall be established by the procuring activity and reasonable access shall be provided to actual or prospective offerors.

"(2) Information exempt from disclosure under section 552 of title 5, United States Code, may be redacted in a file established pursuant to paragraph (1) unless an applicable protective order provides otherwise.

"(3) Regulations implementing this subsection shall be consistent with the regulations regarding the preparation and submission of an agency's protest file (the so-called 'rule 4 file') for protests to the General Services Board of Contract Appeals under section 111 of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 759).".

SEC. 1066. AWARD OF COSTS AND FEES IN AGENCY SETTLEMENT OF PROTESTS.

Section 303B of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253b), as amended by section 1065, is further amended by adding at the end the following new subsection:

"(i) If, in connection with a protest, an agency head determines that a solicitation, proposed award, or award does not comply with the requirements of law or regulation, the agency head may take—

"(1) any action set out in subparagraphs (A) through (F) of subsection (b)(1) of section 3554 of title 31, United States Code; and

"(2) may pay costs described in paragraph (1) of section 3554(c) of such title within the limits referred to in paragraph (2) of such section.".

SEC. 1067. TWO-PHASE SELECTION PROCEDURES.

(a) PROCEDURES AUTHORIZED.—Title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.), as amended by section 1054, is further amended by inserting after section 303H the following new section:

"TWO-PHASE SELECTION PROCEDURES

"SEC. 303I. (a) PROCEDURES AUTHORIZED.—The head of an executive agency may use two-phase selection procedures for entering into a contract for the acquisition of property or services when the agency head determines that three or more offers will be received for such contract, substantial design work must be performed before an offeror can develop a price or cost proposal for such contract, and the offerors will incur a substantial amount of expenses in preparing the offers.

"(b) PROCEDURES DESCRIBED.—Two-phase selection procedures consist of the following:

"(1) The agency head solicits proposals that—

"(A) include information on the offerors'—

"(i) technical approach; and

"(ii) technical qualifications; and

"(B) do not include—

"(i) detailed design information; or

"(ii) cost or price information.

"(2) The agency head evaluates the proposals on the basis of evaluation criteria set forth in the solicitation, except that the agency head does not consider cost-related or price-related evaluation factors.

"(3) The agency head selects at least three offerors as the most highly qualified to provide the property or services under the contract and requests the selected offerors to submit competitive proposals that include cost or price information.

"(4) The agency head awards the contract in accordance with section 303B(d).

"(c) RESOURCE COMPARISON CRITERION REQUIRED.—In using two-phase selection procedures for entering into a contract, the agency head shall establish a resource criterion or a financial criterion applicable to the contract in order to provide a consistent basis for comparing the offerors and their proposals.

"(d) TWO-PHASE SELECTION PROCEDURES DEFINED.—In this section, the term 'two-phase selection procedures' means procedures described in subsection (b) that are used for the selection of a contractor on the basis of cost or price and other evaluation criteria to provide property or services in accordance with the provisions of a contract which requires the contractor to design the property to be acquired under the contract and produce or construct such property.".

(b) CLERICAL AMENDMENT.—The table of contents in the first section of such Act, as amended by section 1054, is further amended by inserting after the item relating to section 303H the following new item:

"Sec. 303I. Two-phase selection procedures.".

Subpart C—Kinds of Contracts

SEC. 1071. AGENCY HEAD DETERMINATION REGARDING USE OF COST TYPE OR INCENTIVE CONTRACT.

Section 304(b) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 254(b)) is amended by striking out the second sentence.

SEC. 1072. MULTIYEAR CONTRACTING AUTHORITY.

(a) AUTHORITY.—Title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.), as amended by section 1067, is further amended by inserting after section 303I the following new section:

"MULTIYEAR CONTRACTS

"SEC. 303J. (a) AUTHORITY.—The head of an executive agency may enter into a multiyear contract for the acquisition of property or services if—

"(1) funds are available and obligated for such contract, for the full period of the contract or for the first fiscal year in which the contract is in effect, and for the estimated costs associated with any necessary termination of such contract; and

"(2) the agency head determines that—

"(A) the need for the property or services is reasonably firm and continuing over the period of the contract; and

"(B) a multiyear contract will serve the best interests of the United States by encouraging effective competition or promoting economy in administration, performance, and operation of the agency's programs.

"(b) TERMINATION CLAUSE.—A multiyear contract entered into under the authority of this section shall include a clause that provides that the contract shall be terminated if funds are not made available for the continuation of such contract in any fiscal year covered by the contract. Amounts available for paying termination costs shall remain available for such purpose until the costs associated with termination of the contract are paid.

"(c) RULE OF CONSTRUCTION.—Nothing in this section is intended to modify or affect any other provision of law that authorizes multiyear contracts.".

(b) CLERICAL AMENDMENT.—The table of contents in the first section of such Act, as amended by section 1067, is further amended by inserting after the item relating to section 303I the following new item:

"Sec. 303J. Multiyear contracts.".

SEC. 1073. SEVERABLE SERVICES CONTRACTS CROSSING FISCAL YEARS.

(a) AUTHORITY.—Title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.), as amended by section 1072, is further amended by inserting after section 303J the following new section:

"SEVERABLE SERVICES CONTRACTS FOR PERIODS CROSSING FISCAL YEARS

"SEC. 303K. (a) AUTHORITY.—The head of an executive agency may enter into a severable contract for procurement of services for a period that begins in one fiscal year and ends in the next fiscal year if (without regard to any option to extend the period of the contract) the contract period does not exceed one year.

"(b) AVAILABILITY OF FUNDS.—To the extent provided in appropriations Acts, funds obligated for a contract entered into under the authority of subsection (a) shall remain available until no longer needed to pay for such contract.

"(c) SEVERABLE CONTRACT DEFINED.—In this section, the term 'severable contract' means a contract that contains a clause that makes the effectiveness of the contract for periods after the end of the fiscal year in which the performance of the contract begins subject to the availability of appropriations.".

(b) CLERICAL AMENDMENT.—The table of contents in the first section of such Act, as amended by section 1072, is further amended by inserting after the item relating to section 303J the following new item:

"Sec. 303K. Severable services contracts for periods crossing fiscal years.".

SEC. 1074. ECONOMY ACT PURCHASES.

(a) REGULATIONS REQUIRED.—Not later than six months after the date of the enactment of this Act, the Federal Acquisition Regulation shall be revised to include regulations governing

the exercise of the authority under section 1535 of title 31, United States Code, for Federal agencies to purchase goods and services under contracts entered into or administered by other agencies.

(b) CONTENT OF REGULATIONS.—The regulations prescribed pursuant to subsection (a) shall—

(1) require that each purchase described in subsection (a) be approved in advance by a contracting officer of the ordering agency with authority to contract for the goods or services to be purchased or by another official in a position specifically designated by regulation to approve such purchase;

(2) provide that such a purchase of goods or services may be made only if—

(A) the purchase is appropriately made under a contract that the agency filling the purchase order entered into, before the purchase order, in order to meet the requirements of such agency for the same or similar goods or services;

(B) the agency filling the purchase order is better qualified to enter into or administer the contract for such goods or services by reason of capabilities or expertise that is not available within the ordering agency; or

(C) the agency or unit filling the order is specifically authorized by law or regulations to purchase such goods or services on behalf of other agencies;

(3) prohibit any such purchase under a contract or other agreement entered into or administered by an agency not covered by the provisions of chapter 137 of title 10, United States Code, or title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.) and not covered by the Federal Acquisition Regulation unless the purchase is approved in advance by the senior procurement official responsible for purchasing by the ordering agency; and

(4) prohibit any payment to the agency filling a purchase order of any fee that exceeds the actual cost or, if the actual cost is not known, the estimated cost of entering into and administering the contract or other agreement under which the order is filled.

(c) MONITORING SYSTEM REQUIRED.—The Administrator for Federal Procurement Policy shall ensure that, not later than one year after the date of the enactment of this Act, systems for collecting and evaluating procurement data are capable of collecting and evaluating appropriate data on procurements conducted under the regulations prescribed pursuant to subsection (a).

(d) TERMINATION.—This section shall cease to be effective one year after the date on which final regulations prescribed pursuant to subsection (a) take effect.

PART III—ACQUISITIONS GENERALLY

SEC. 1091. POLICY REGARDING CONSIDERATION OF CONTRACTOR PAST PERFORMANCE.

(a) POLICY.—Section 2 of the Office of Federal Procurement Policy Act (41 U.S.C. 401) is amended—

(1) by striking out "and" at the end of paragraph (12);

(2) by striking out the period at the end of paragraph (13) and inserting in lieu thereof "; and"; and

(3) by adding at the end the following new paragraph:

"(14) establishing policies and procedures that encourage the consideration of contractors' past performance in the selection of contractors.".

(b) GUIDANCE REQUIRED.—Section 6 of the Office of Federal Procurement Policy Act (41 U.S.C. 405) is amended by adding at the end the following:

"(j)(1) Congress makes the following findings:

"(A) Past contract performance of an offeror is one of the relevant factors that contracting officials of executive agencies should consider in entering into contracts.

"(B) It is appropriate for a contracting official to consider past contract performance of an offeror as an indicator of the likelihood that the offeror will successfully perform a contract to be entered into by that official.

"(2) The Administrator shall prescribe for executive agencies guidance regarding consideration of the past contract performance of offerors in awarding contracts. The guidance shall include—

"(A) standards for evaluating past performance with respect to cost (when appropriate), schedule, compliance with technical or functional specifications, and other relevant performance factors that facilitate consistent and fair evaluation by all executive agencies;

"(B) policies for the collection and maintenance of information on past contract performance that, to the maximum extent practicable, facilitate automated collection, maintenance, and dissemination of information and provide for ease of collection, maintenance, and dissemination of information by other methods, as necessary; and

"(C) policies for ensuring that offerors are afforded an opportunity to submit information on past contract performance and that information submitted by offerors is considered.

"(3) The Administrator shall prescribe for all executive agencies the policy regarding the period for which information on past performance of offerors may be maintained and considered.

"(4) In the case of an offeror regarding whom there is no information on past contract performance or regarding whom information on past contract performance is not available, the offeror may not be evaluated favorably or unfavorably on the factor of past contract performance.".

SEC. 1092. REPEAL OF REQUIREMENT FOR ANNUAL REPORT ON COMPETITION.

Section 23 of the Office of Federal Procurement Policy Act (41 U.S.C. 419) is repealed.

Subtitle B—Truth in Negotiations

PART I—ARMED SERVICES ACQUISITIONS

SEC. 1201. STABILIZATION OF DOLLAR THRESHOLD OF APPLICABILITY.

(a) REPEAL OF REVERSION TO LOWER THRESHOLD.—Paragraph (1)(A) of section 2306a(a) of title 10, United States Code, is amended—

(1) in clause (i), by striking out "and before January 1, 1996,"; and

(2) in clause (ii), by striking out "or after December 31, 1995,".

(b) ADJUSTMENTS FOR CHANGES IN DOLLAR VALUES.—Section 2306a(a) of such title is amended by adding at the end the following new subparagraph:

"(7) Effective on October 1 of each year that is divisible by 5, each amount set forth in paragraph (1) shall be adjusted to the amount that is equal to the fiscal year 1994 constant dollar value of the amount set forth. Any amount, as so adjusted, that is not evenly divisible by $50,000 shall be rounded to the nearest multiple of $50,000. In the case of an amount that is evenly divisible by $25,000 but not evenly divisible by $50,000, the amount shall be rounded to the next higher multiple of $50,000.".

SEC. 1202. EXCEPTIONS TO COST OR PRICING DATA REQUIREMENTS.

(a) EXCEPTIONS STATED.—Subsection (b) of section 2306a of title 10, United States Code, is amended to read as follows:

"(b) EXCEPTIONS.—(1) Submission of cost and pricing data shall not be required under subsection (a)—

"(A) in the case of a contract, a subcontract, or a contract or subcontract modification, for which the price agreed upon is based on—

"(i) adequate price competition;

"(ii) established catalog or market prices of commercial items or of services customarily used for other than Government purposes, as the case may be, that are sold in substantial quantities to the general public; or

"(iii) prices set by law or regulation; or

"(B) in an exceptional case when the head of the agency concerned determines that the requirements of this section may be waived and states in writing the reasons for such determination.

"(2) Submission of cost and pricing data shall not be required under subsection (a) in the case of a modification of a contract or subcontract for a commercial item if—

"(A) the contract or subcontract being modified is a contract or subcontract for which submission of cost and pricing data may not be required by reason of paragraph (1)(A);

"(B) the modification is not a case in which paragraph (1)(A) prohibits the head of an agency from requiring submission of cost and pricing data; and

"(C) the modification would not change the contract or subcontract, as the case may be, from a contract or subcontract for the acquisition of a commercial item to a contract or subcontract for the acquisition of a noncommercial item.".

(b) CONFORMING AMENDMENT TO REFERENCE.—Subsection (a)(5) of such section is amended by striking out "subsection (b)(2)" and inserting in lieu thereof "subsection (b)(1)(B)".

SEC. 1203. LIMITATION ON AUTHORITY TO REQUIRE A SUBMISSION NOT OTHERWISE REQUIRED.

Subsection (c) of section 2306a of title 10, United States Code, is amended to read as follows:

"(c) LIMITATION ON AUTHORITY TO REQUIRE COST OR PRICING DATA.—When cost or pricing data are not required to be submitted under this section by reason of a $500,000 threshold set forth in subsection (a) (as adjusted pursuant to paragraph (7) of such subsection) or by reason of an exception set forth in paragraph (1)(A) or (2) of subsection (b), submission of such data may not be required unless the head of an agency concerned determines that such data are necessary for the evaluation by the agency of the reasonableness of the price of the contract or subcontract to which the data relate. In any case in which the head of an agency requires such data to be submitted in accordance with the preceding sentence, the agency head shall document in writing the reasons for such requirement.".

SEC. 1204. ADDITIONAL SPECIAL RULES FOR COMMERCIAL ITEMS.

Section 2306a of title 10, United States Code, is amended—

(1) by redesignating subsections (d), (e), (f), and (g) as subsections (e), (f), (g), and (i), respectively; and

(2) by inserting after subsection (c) the following new subsection (d):

"(d) ADDITIONAL EXCEPTION PROVISIONS REGARDING COMMERCIAL ITEMS.—(1) To the maximum extent practicable, the head of an agency shall conduct procurements of commercial items on a competitive basis.

"(2) In any case in which it is not practicable to conduct a procurement of a commercial item on a competitive basis and the procurement is not covered by an exception in subsection (b), the contracting officer shall nonetheless exempt a contract, subcontract, or modification of a contract or subcontract under the procurement from the requirements of subsection (a) if the contracting officer develops or obtains from the offeror or contractor, or from another source or sources, in accordance with standards and procedures set forth in the Federal Acquisition Regulation, information on prices at which the

same or similar items have been sold in the commercial market that is adequate for evaluating the reasonableness of the price of the contract or subcontract for a commercial item, or the contract or subcontract modification, as the case may be.

"(3)(A) In accordance with procedures prescribed in the Federal Acquisition Regulation, the head of an agency shall have the right to examine all information provided by an offeror, contractor, or subcontractor pursuant to paragraph (2) and all books and records of such offeror, contractor, or subcontractor that directly relate to such information in order to determine whether the agency is receiving accurate information required under this section.

"(B) The right under subparagraph (A) shall expire 3 years after the date of award of the contract, or 3 years after the date of the modification of the contract, with respect to which the information was provided.".

SEC. 1205. RIGHT OF UNITED STATES TO EXAMINE CONTRACTOR RECORDS.

Section 2306a of title 10, United States Code, is amended by striking out subsection (g), as redesignated by section 1204(1), and inserting in lieu thereof the following:

"(g) RIGHT OF UNITED STATES TO EXAMINE CONTRACTOR RECORDS.—For the purpose of evaluating the accuracy, completeness, and currency of cost or pricing data required to be submitted by this section, the head of an agency shall have the rights provided by section 2313 of this title.".

SEC. 1206. REQUIRED REGULATIONS.

Section 2306a of title 10, United States Code, as amended by sections 1204 and 1205, is further amended by inserting after subsection (g) the following new subsection:

"(h) REQUIRED REGULATIONS.—The Secretary shall prescribe regulations concerning the types of information that offerors must submit for a contracting officer to consider in determining whether the price of a procurement to the Government is fair and reasonable when certified cost or pricing data are not required to be submitted under this section because the price of the procurement to the United States is not expected to exceed an applicable $500,000 threshold set forth in subsection (a) (as adjusted pursuant to paragraph (7) of such subsection). Such information, at a minimum, shall include appropriate information on the prices at which such offeror has previously sold the same or similar products.".

SEC. 1207. CONSISTENCY OF TIME REFERENCES.

Section 2306a of title 10, United States Code, as amended by section 1204(1), is further amended—

(1) in subparagraphs (A)(ii) and (B)(ii) of subsection (e)(4), by inserting "or, if applicable consistent with paragraph (1)(B), another date agreed upon between the parties," after "(or price of the modification)"; and

(2) in subsection (i), by inserting "or, if applicable consistent with subsection (d)(1)(B), another date agreed upon between the parties" after "(or the price of a contract modification)".

SEC. 1208. EXCEPTION FOR TRANSFERS BETWEEN DIVISIONS, SUBSIDIARIES, AND AFFILIATES.

Subsection (i) of section 2306a of title 10, United States Code, as redesignated by section 1204(1), is amended to read as follows:

"(i) DEFINITIONS.—In this section:

"(1) The term 'cost or pricing data' means all facts that, as of the date of agreement on the price of a contract (or the price of a contract modification), a prudent buyer or seller would reasonably expect to affect price negotiations significantly. Such term does not include information that is judgmental, but does include the factual information from which a judgment was derived.

"(2) The term 'subcontract' includes a transfer of commercial items between divisions, subsidiaries, or affiliates of a contractor.".

SEC. 1209. REPEAL OF SUPERSEDED PROVISION.

Subsections (b) and (c) of section 803 of Public Law 101-510 (10 U.S.C. 2306a note) are repealed.

PART II—CIVILIAN AGENCY ACQUISITIONS

SEC. 1251. REVISION OF CIVILIAN AGENCY PROVISIONS TO ENSURE UNIFORM TREATMENT OF COST OR PRICING DATA.

(a) IN GENERAL.—Title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.) is amended—

(1) in section 304, by striking out subsection (d); and

(2) by inserting after section 304 the following new section:

"COST OR PRICING DATA: TRUTH IN NEGOTIATIONS

"SEC. 304A. (a) REQUIRED COST OR PRICING DATA AND CERTIFICATION.—(1) An agency head shall require offerors, contractors, and subcontractors to make cost or pricing data available as follows:

"(A) An offeror for a prime contract under this title to be entered into using procedures other than sealed-bid procedures shall be required to submit cost or pricing data before the award of a contract if—

"(i) in the case of a prime contract entered into after the date of the enactment of the Federal Acquisition Streamlining Act of 1994, the price of the contract to the United States is expected to exceed $500,000; and

"(ii) in the case of a prime contract entered into on or before the date of the enactment of the Federal Acquisition Streamlining Act of 1994, the price of the contract to the United States is expected to exceed $100,000.

"(B) The contractor for a prime contract under this chapter shall be required to submit cost or pricing data before the pricing of a change or modification to the contract if—

"(i) in the case of a change or modification made to a prime contract referred to in subparagraph (A)(i), the price adjustment is expected to exceed $500,000;

"(ii) in the case of a change or modification made to a prime contract that was entered into on or before the date of the enactment of the Federal Acquisition Streamlining Act of 1994, and that has been modified pursuant to paragraph (6), the price adjustment is expected to exceed $500,000; and

"(iii) in the case of a change or modification not covered by clause (i) or (ii), the price adjustment is expected to exceed $100,000.

"(C) An offeror for a subcontract (at any tier) of a contract under this title shall be required to submit cost or pricing data before the award of the subcontract if the prime contractor and each higher-tier subcontractor have been required to make available cost or pricing data under this section and—

"(i) in the case of a subcontract under a prime contract referred to in subparagraph (A)(i), the price of the subcontract is expected to exceed $500,000;

"(ii) in the case of a subcontract entered into under a prime contract that was entered into on or before the date of the enactment of the Federal Acquisition Streamlining Act of 1994, and that has been modified pursuant to paragraph (6), the price of the subcontract is expected to exceed $500,000; and

"(iii) in the case of a subcontract not covered by clause (i) or (ii), the price of the subcontract is expected to exceed $100,000.

"(D) The subcontractor for a subcontract covered by subparagraph (C) shall be required to submit cost or pricing data before the pricing of a change or modification to the subcontract if—

"(i) in the case of a change or modification to a subcontract referred to in subparagraph (C)(i) or (C)(ii), the price adjustment is expected to exceed $500,000; and

"(ii) in the case of a change or modification to a subcontract referred to in subparagraph (C)(iii), the price adjustment is expected to exceed $100,000.

"(2) A person required, as an offeror, contractor, or subcontractor, to submit cost or pricing data under paragraph (1) (or required by the agency head concerned to submit such data in accordance with subsection (c)) shall be required to certify that, to the best of the person's knowledge and belief, the cost or pricing data submitted are accurate, complete, and current.

"(3) Cost or pricing data required to be submitted under paragraph (1) (or in accordance with subsection (c)), and a certification required to be submitted under paragraph (2), shall be submitted—

"(A) in the case of a submission by a prime contractor (or an offeror for a prime contract), to the contracting officer for the contract (or to a designated representative of the contracting officer); or

"(B) in the case of a submission by a subcontractor (or an offeror for a subcontract), to the prime contractor.

"(4) Except as provided under subsection (b), this section applies to contracts entered into by an agency head on behalf of a foreign government.

"(5) For purposes of paragraph (1)(C), a contractor or subcontractor granted a waiver under subsection (b)(1)(B) shall be considered as having been required to make available cost or pricing data under this section.

"(6)(A) Upon the request of a contractor that was required to submit cost or pricing data under paragraph (1) in connection with a prime contract entered into on or before the date of the enactment of the Federal Acquisition Streamlining Act of 1994, the agency head that entered into such contract shall modify the contract to reflect subparagraphs (B)(ii) and (C)(ii) of paragraph (1). All such modifications shall be made without requiring consideration.

"(B) An agency head is not required to modify a contract under subparagraph (A) if that agency head determines that the submission of cost or pricing data with respect to that contract should be required in accordance with subsection (c).

"(7) Effective on October 1 of each year that is divisible by 5, each amount set forth in paragraph (1) shall be adjusted to the amount that is equal to the fiscal year 1994 constant dollar value of the amount set forth. Any amount, as so adjusted, that is not evenly divisible by $50,000 shall be rounded to the nearest multiple of $50,000. In the case of an amount that is evenly divisible by $25,000 but not evenly divisible by $50,000, the amount shall be rounded to the next higher multiple of $50,000.

"(b) EXCEPTIONS.—(1) Submission of cost and pricing data shall not be required under subsection (a)—

"(A) in the case of a contract, a subcontract, or a contract or subcontract modification, for which the price agreed upon is based on—

"(i) adequate price competition;

"(ii) established catalog or market prices of commercial items or of services customarily used for other than Government purposes, as the case may be, that are sold in substantial quantities to the general public; or

"(iii) prices set by law or regulation; or

"(B) in an exceptional case when the agency head concerned determines that the requirements of this section may be waived and states in writing the reasons for such determination.

"(2) Submission of cost and pricing data shall not be required under subsection (a) in the case of a modification of a contract or subcontract for a commercial item if—

"(A) the contract or subcontract being modified is a contract or subcontract for which submission of cost and pricing data may not be required by reason of paragraph (1)(A);

"(B) the modification is not a case in which paragraph (1)(A) prohibits the agency head from requiring submission of cost and pricing data; and

"(C) the modification would not change the contract or subcontract, as the case may be, from a contract or subcontract for the acquisition of a commercial item to a contract or subcontract for the acquisition of a noncommercial item.

"(c) LIMITATION ON AUTHORITY TO REQUIRE COST OR PRICING DATA.—When cost or pricing data are not required to be submitted under this section by reason of a $500,000 threshold set forth in subsection (a) (as adjusted pursuant to paragraph (7) of such subsection) or by reason of an exception in paragraph (1)(A) or (2) of subsection (b), submission of such data may not be required unless the agency head concerned determines that such data are necessary for the evaluation by the agency of the reasonableness of the price of the contract or subcontract to which the data relate. In any case in which the agency head requires such data to be submitted in accordance with the preceding sentence, the agency head shall document in writing the reasons for such requirement.

"(d) ADDITIONAL EXCEPTION PROVISIONS REGARDING COMMERCIAL ITEMS.—(1) To the maximum extent practicable, an agency head shall conduct procurements of commercial items on a competitive basis.

"(2) In any case in which it is not practicable to conduct a procurement of a commercial item on a competitive basis and the procurement is not covered by an exception in subsection (b), the contracting officer shall nonetheless exempt a contract, subcontract, or modification of a contract or subcontract under the procurement from the requirements of subsection (a) if the contracting officer develops or obtains from the offeror or contractor, or from another source or sources, in accordance with standards and procedures set forth in the Federal Acquisition Regulation, information on prices at which the same or similar items have been sold in the commercial market that is adequate for evaluating the reasonableness of the price of the contract or subcontract for a commercial item, or the contract or subcontract modification, as the case may be.

"(3)(A) In accordance with procedures prescribed in the Federal Acquisition Regulation, an agency head shall have the right to examine all information provided by an offeror, contractor, or subcontractor pursuant to paragraph (2) and all books and records of such offeror, contractor, or subcontractor that directly relate to such information in order to determine whether the agency is receiving accurate information required under this section.

"(B) The right under subparagraph (A) shall expire 3 years after the date of award of the contract, or 3 years after the date of the modification of the contract, with respect to which the information was provided.

"(e) PRICE REDUCTIONS FOR DEFECTIVE COST OR PRICING DATA.—(1)(A) A prime contract (or change or modification to a prime contract) under which a certificate under subsection (a)(2) is required shall contain a provision that the price of the contract to the United States, including profit or fee, shall be adjusted to exclude any significant amount by which it may be determined by the agency head that such price was increased because the contractor (or any subcontractor required to make available such a certificate) submitted defective cost or pricing data.

"(B) For the purposes of this section, defective cost or pricing data are cost or pricing data which, as of the date of agreement on the price of the contract (or another date agreed upon between the parties), were inaccurate, incomplete, or noncurrent. If for purposes of the preceding sentence the parties agree upon a date other than the date of agreement on the price of the contract, the date agreed upon by the parties shall be as close to the date of agreement on the price of the contract as is practicable.

"(2) In determining for purposes of a contract price adjustment under a contract provision required by paragraph (1) whether, and to what extent, a contract price was increased because the contractor (or a subcontractor) submitted defective cost or pricing data, it shall be a defense that the United States did not rely on the defective data submitted by the contractor or subcontractor.

"(3) It is not a defense to an adjustment of the price of a contract under a contract provision required by paragraph (1) that—

"(A) the price of the contract would not have been modified even if accurate, complete, and current cost or pricing data had been submitted by the contractor or subcontractor because the contractor or subcontractor—

"(i) was the sole source of the property or services procured; or

"(ii) otherwise was in a superior bargaining position with respect to the property or services procured;

"(B) the contracting officer should have known that the cost and pricing data in issue were defective even though the contractor or subcontractor took no affirmative action to bring the character of the data to the attention of the contracting officer;

"(C) the contract was based on an agreement between the contractor and the United States about the total cost of the contract and there was no agreement about the cost of each item procured under such contract; or

"(D) the prime contractor or subcontractor did not submit a certification of cost and pricing data relating to the contract as required under subsection (a)(2).

"(4)(A) A contractor shall be allowed to offset an amount against the amount of a contract price adjustment under a contract provision required by paragraph (1) if—

"(i) the contractor certifies to the contracting officer (or to a designated representative of the contracting officer) that, to the best of the contractor's knowledge and belief, the contractor is entitled to the offset; and

"(ii) the contractor proves that the cost or pricing data were available before the date of agreement on the price of the contract (or price of the modification), or, if applicable consistent with paragraph (1)(B), another date agreed upon between the parties, and that the data were not submitted as specified in subsection (a)(3) before such date.

"(B) A contractor shall not be allowed to offset an amount otherwise authorized to be offset under subparagraph (A) if—

"(i) the certification under subsection (a)(2) with respect to the cost or pricing data involved was known to be false when signed; or

"(ii) the United States proves that, had the cost or pricing data referred to in subparagraph (A)(ii) been submitted to the United States before the date of agreement on the price of the contract (or price of the modification) or, if applicable under paragraph (1)(B), another date agreed upon between the parties, the submission of such cost or pricing data would not have resulted in an increase in that price in the amount to be offset.

"(f) INTEREST AND PENALTIES FOR CERTAIN OVERPAYMENTS.—(1) If the United States makes an overpayment to a contractor under a contract with an executive agency subject to this section and the overpayment was due to the submission by the contractor of defective cost or pricing data, the contractor shall be liable to the United States—

"(A) for interest on the amount of such overpayment, to be computed—

"(i) for the period beginning on the date the overpayment was made to the contractor and ending on the date the contractor repays the amount of such overpayment to the United States; and

"(ii) at the current rate prescribed by the Secretary of the Treasury under section 6621 of the Internal Revenue Code of 1986; and

"(B) if the submission of such defective data was a knowing submission, for an additional amount equal to the amount of the overpayment.

"(2) Any liability under this subsection of a contractor that submits cost or pricing data but refuses to submit the certification required by subsection (a)(2) with respect to the cost or pricing data shall not be affected by the refusal to submit such certification.

"(g) RIGHT OF UNITED STATES TO EXAMINE CONTRACTOR RECORDS.—For the purpose of evaluating the accuracy, completeness, and currency of cost or pricing data required to be submitted by this section, the head of an agency shall have the rights provided by section 304B(a)(2).

"(h) REQUIRED REGULATIONS.—The Federal Acquisition Regulation shall include regulations concerning the types of information that offerors must submit for a contracting officer to consider in determining whether the price of a procurement to the Government is fair and reasonable when certified cost or pricing data are not required to be submitted under this section because the price of the procurement to the United States is not expected to exceed an applicable $500,000 threshold set forth in subsection (a) (as adjusted pursuant to paragraph (7) of such subsection). Such information, at a minimum, shall include appropriate information on the prices at which such offeror has previously sold the same or similar products.

"(i) DEFINITIONS.—In this section:

"(1) The term 'cost or pricing data' means all facts that, as of the date of agreement on the price of a contract (or the price of a contract modification) or, if applicable consistent with subsection (e)(1)(B), another date agreed upon between the parties, a prudent buyer or seller would reasonably expect to affect price negotiations significantly. Such term does not include information that is judgmental, but does include the factual information from which a judgment was derived.

"(2) The term 'subcontract' includes a transfer of commercial items between divisions, subsidiaries, or affiliates of a contractor.".

(b) TABLE OF CONTENTS.—The table of contents in the first section of such Act is amended by inserting after the item relating to section 304 the following:

"Sec. 304A. Cost or pricing data: truth in negotiations.".

SEC. 1252. REPEAL OF OBSOLETE PROVISION.

(a) REPEAL.—Section 303E of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253e) is repealed.

(b) CLERICAL AMENDMENT.—The table of contents in the first section of such Act is amended by striking out the item relating to section 303E.

Subtitle C—Research and Development

SEC. 1301. RESEARCH PROJECTS.

(a) AUTHORIZED MEANS.—Subsection (b) of section 2358 of title 10, United States Code, is amended to read as follows:

"(b) AUTHORIZED MEANS.—The Secretary of Defense or the Secretary of a military department may perform research and development projects—

"(1) by contract entered into with, grant made to, or cooperative agreement entered into with educational or research institutions, private

businesses, or other persons in accordance with the provisions of chapter 63 of title 31;

"(2) through one or more military departments;

"(3) by using employees and consultants of the Department of Defense; or

"(4) by mutual agreement with the head of any other department or agency of the Federal Government.".

(b) CAPTION AMENDMENT.—The caption of subsection (c) of such section is amended by striking out "MILITARY" and inserting in lieu thereof "DEPARTMENT OF DEFENSE".

(c) ADVANCED RESEARCH PROJECTS.—

(1) RESTORATION AND REVISION OF FORMER STATEMENT OF AUTHORITY.—Section 2371 of title 10, United States Code, is amended—

(A) by redesignating subsections (a), (b), (c), (d), (e), and (f) as subsections (b), (c), (d), (e), (f), and (g), respectively; and

(B) by inserting before subsection (b), as so redesignated, the following new subsection (a):

"(a) The Secretary of Defense, acting through the Advanced Research Projects Agency and such other elements of the Department of Defense as the Secretary may designate, and the Secretary of each military department, in carrying out basic, applied, and advanced research projects, may enter into other transactions, in addition to contracts, grants, and cooperative agreements authorized by section 2358 of this title.".

(2) CONFORMING AMENDMENTS.—Such section, as amended by paragraph (1), is further amended—

(A) in subsection (b)—

(i) in paragraph (1), by inserting "or subsection (a)" after "section 2358 of this title"; and

(ii) in paragraph (2), by striking out "subsection (d)" and inserting in lieu thereof "subsection (e)";

(B) in subsection (c), by inserting "section 2358 of this title or" after "under";

(C) in subsection (d)—

(i) in paragraph (1), by striking out "this section" and inserting in lieu thereof "section 2358 of this title or subsection (a)"; and

(ii) in paragraph (3), by striking out "this section" and inserting in lieu thereof "section 2358 of this title or subsection (a)";

(D) in subsection (e), by inserting "or subsection (a)" in the first sentence after "section 2358 of this title"; and

(E) in subsection (f)—

(i) in the first sentence, by striking out "under this section" and inserting in lieu thereof "under section 2358 of this title or subsection (a)";

(ii) in paragraph (4), by striking out "subsection (a)" and inserting in lieu thereof "subsection (b)"; and

(iii) in paragraph (5), by striking out "subsection (d)" and inserting in lieu thereof "subsection (e)".

SEC. 1302. ELIMINATION OF INFLEXIBLE TERMINOLOGY REGARDING COORDINATION AND COMMUNICATION OF DEFENSE RESEARCH ACTIVITIES.

Section 2364 of title 10, United States Code, is amended—

(1) in subsection (b)(5), by striking out "milestone 0, milestone I, and milestone II decisions" and inserting in lieu thereof "acquisition program decisions"; and

(2) in subsection (c), by striking out paragraphs (2), (3), and (4) and inserting in lieu thereof the following:

"(2) The term 'acquisition program decisions' has the meaning given such term in regulations prescribed by the Secretary of Defense for the purposes of this section.".

Subtitle D—Procurement Protests

PART I—PROTESTS TO THE COMPTROLLER GENERAL

SEC. 1401. PROTEST DEFINED.

Paragraph (1) of section 3551 of title 31, United States Code, is amended to read as follows:

"(1) 'protest' means a written objection by an interested party—

"(i) to a solicitation or other request by a Federal agency for offers for a contract for the procurement of property or services;

"(ii) to the cancellation of such a solicitation or other request;

"(iii) to an award or proposed award of such a contract; or

"(iv) to a termination or cancellation of an award of such a contract, if the written objection contains an allegation that the termination or cancellation is based in whole or in part on improprieties concerning the award of the contract;".

SEC. 1402. REVIEW OF PROTESTS AND EFFECT ON CONTRACTS PENDING DECISION.

(a) PERIODS FOR CERTAIN ACTIONS.—Section 3553 of title 31, United States Code, is amended—

(1) in subsection (b)—

(A) in paragraph (1), by striking out "one working day of" and inserting in lieu thereof "one day after"; and

(B) in paragraph (2)—

(i) in subparagraph (A), by striking out "25 working days from" and inserting in lieu thereof "35 days after"; and

(ii) in subparagraph (C), by striking out "10 working days from" and inserting in lieu thereof "25 days after"; and

(2) in subsection (c)(3), by striking out "thereafter" and inserting in lieu thereof "after the making of such finding".

(b) SUSPENSION OF PERFORMANCE.—Subsection (d) of such section is amended to read as follows:

"(d)(1) A contractor awarded a Federal agency contract may, during the period described in paragraph (4), begin performance of the contract and engage in any related activities that result in obligations being incurred by the United States under the contract unless the contracting officer responsible for the award of the contract withholds authorization to proceed with performance of the contract.

"(2) The contracting officer may withhold an authorization to proceed with performance of the contract during the period described in paragraph (4) if the contracting officer determines in writing that—

"(A) a protest is likely to be filed; and

"(B) the immediate performance of the contract is not in the best interests of the United States.

"(3)(A) If the Federal agency awarding the contract receives notice of a protest in accordance with this section during the period described in paragraph (4)—

"(i) the contracting officer may not authorize performance of the contract to begin while the protest is pending; or

"(ii) if contract performance authorization to proceed was not withheld in accordance with paragraph (2) before receipt of the notice, the contracting officer shall immediately direct the contractor to cease performance under the contract and to suspend any related activities that may result in additional obligations being incurred by the United States under that contract.

"(B) Performance and related activities suspended pursuant to subparagraph (A)(ii) by reason of a protest may not be resumed while the protest is pending.

"(C) The head of the procuring activity may authorize the performance of the contract (notwithstanding a protest of which the Federal agency has notice under this section)—

"(i) upon a written finding that—

"(I) performance of the contract is in the best interests of the United States; or

"(II) urgent and compelling circumstances that significantly affect interests of the United States will not permit waiting for the decision of the Comptroller General concerning the protest; and

"(ii) after the Comptroller General is notified of that finding.

"(4) The period referred to in paragraphs (2) and (3)(A), with respect to a contract, is the period beginning on the date of the contract award and ending on the later of—

"(A) the date that is 10 days after the date of the contract award; or

"(B) the date that is 5 days after—

"(i) the debriefing date offered to an unsuccessful offeror for any debriefing that is requested and, when requested, is required; or

"(ii) in the case of a contract for which no debriefing is required, the date on which the unsuccessful offeror receives the notification of contract award.".

SEC. 1403. DECISIONS ON PROTESTS.

(a) PERIODS FOR CERTAIN ACTIONS.—Section 3554(a) of title 31, United States Code, is amended—

(1) in paragraph (1), by striking out "90 working days from" and inserting in lieu thereof "125 days after";

(2) in paragraph (2), by striking out "45 calendar days from" and inserting "65 days after";

(3) by redesignating paragraph (3) as paragraph (4); and

(4) by inserting after paragraph (2) the following new paragraph (3):

"(3) An amendment to a protest that adds a new ground of protest, if timely made, should be resolved, to the maximum extent practicable, within the time limit established under paragraph (1) of this subsection for final decision of the initial protest. If an amended protest cannot be resolved within such time limit, the Comptroller General may resolve the amended protest through the express option under paragraph (2) of this subsection.".

(b) GAO RECOMMENDATIONS ON PROTESTS.—

(1) IMPLEMENTATION OF RECOMMENDATIONS.—Section 3554 of title 31, United States Code, is amended—

(A) in subsection (b), by adding at the end the following new paragraph:

"(3) If the Federal agency fails to implement fully the recommendations of the Comptroller General under this subsection with respect to a solicitation for a contract or an award or proposed award of a contract within 60 days after receiving the recommendations, the head of the procuring activity responsible for that contract shall report such failure to the Comptroller General not later than 5 working days after the end of such 60-day period.";

(B) by striking out subsection (c) and inserting in lieu thereof the following:

"(c)(1) If the Comptroller General determines that a solicitation for a contract or a proposed award or the award of a contract does not comply with a statute or regulation, the Comptroller General may recommend that the Federal agency conducting the procurement pay to an appropriate interested party the costs of—

"(A) filing and pursuing the protest, including reasonable attorney's fees and consultant and expert witness fees; and

"(B) bid and proposal preparation.

"(2) No party may be paid, pursuant to a recommendation made under the authority of paragraph (1)—

"(A) costs for consultant and expert witness fees that exceed the rates provided under section 504(b)(1)(A) of title 5 for expert witnesses; or

"(B) costs for attorney's fees that exceed the rates provided for attorneys under section 504(b)(1)(A) of title 5.

"(3) If the Comptroller General recommends under paragraph (1) that a Federal agency pay costs to an interested party, the Federal agency shall—

"(A) pay the costs promptly; or

"(B) if the Federal agency does not make such payment, promptly report to the Comptroller General the reasons for the failure to follow the Comptroller General's recommendation.

"(4) If the Comptroller General recommends under paragraph (1) that a Federal agency pay costs to an interested party, the Federal agency and the interested party shall attempt to reach an agreement on the amount of the costs to be paid. If the Federal agency and the interested party are unable to agree on the amount to be paid, the Comptroller General may, upon the request of the interested party, recommend to the Federal agency the amount of the costs that the Federal agency should pay."; and

(C) by striking out subsection (e) and inserting in lieu thereof the following:

"(e)(1) The Comptroller General shall report promptly to the Committee on Governmental Affairs and the Committee on Appropriations of the Senate and to the Committee on Government Operations and the Committee on Appropriations of the House of Representatives any case in which a Federal agency fails to implement fully a recommendation of the Comptroller General under subsection (b) or (c). The report shall include—

"(A) a comprehensive review of the pertinent procurement, including the circumstances of the failure of the Federal agency to implement a recommendation of the Comptroller General; and

"(B) a recommendation regarding whether, in order to correct an inequity or to preserve the integrity of the procurement process, the Congress should consider—

"(i) private relief legislation;

"(ii) legislative rescission or cancellation of funds;

"(iii) further investigation by Congress; or

"(iv) other action.

"(2) Not later than January 31 of each year, the Comptroller General shall transmit to the Congress a report containing a summary of each instance in which a Federal agency did not fully implement a recommendation of the Comptroller General under subsection (b) or (c) during the preceding year. The report shall also describe each instance in which a final decision in a protest was not rendered within 125 days after the date the protest is submitted to the Comptroller General.".

(2) REQUIREMENT FOR PAYMENT IN ACCORDANCE WITH PRIOR GAO DETERMINATIONS.—Costs to which the Comptroller General declared an interested party to be entitled under section 3554 of title 31, United States Code, as in effect immediately before the enactment of this Act, shall, if not paid or otherwise satisfied by the Federal agency concerned before the date of the enactment of this Act, be paid promptly.

SEC. 1404. REGULATIONS.

(a) COMPUTATION OF PERIODS.—Section 3555 of title 31, United States Code, is amended—

(1) by redesignating subsection (b) as subsection (d); and

(2) by inserting after subsection (a) the following new subsection (b):

"(b) The procedures shall provide that, in the computation of any period described in this subchapter—

"(1) the day of the act, event, or default from which the designated period of time begins to run not be included; and

"(2) the last day after such act, event, or default be included, unless—

"(A) such last day is a Saturday, a Sunday, or a legal holiday; or

"(B) in the case of a filing of a paper at the General Accounting Office or a Federal agency, such last day is a day on which weather or other conditions cause the closing of the General Accounting Office or Federal agency, in which event the next day that is not a Saturday, Sunday, or legal holiday shall be included.".

(b) ELECTRONIC FILINGS AND DISSEMINATIONS.—Such section, as amended by subsection (a), is further amended by inserting after subsection (b) the following new subsection:

"(c) The Comptroller General may prescribe procedures for the electronic filing and dissemination of documents and information required under this subchapter. In prescribing such procedures, the Comptroller General shall consider the ability of all parties to achieve electronic access to such documents and records.".

(c) REPEAL OF OBSOLETE DEADLINE.—Subsection (a) of such section is amended by striking out "Not later than January 15, 1985, the" and inserting in lieu thereof "The".

PART II—PROTESTS IN THE FEDERAL COURTS

SEC. 1421. NONEXCLUSIVITY OF REMEDIES.

Section 3556 of title 31, United States Code, is amended by striking out "a district court of the United States or the United States Claims Court" in the first sentence and inserting in lieu thereof "the United States Court of Federal Claims".

SEC. 1422. JURISDICTION OF THE UNITED STATES COURT OF FEDERAL CLAIMS.

(a) CLAIMS AGAINST THE UNITED STATES AND BID PROTESTS.—Section 1491 of title 28, United States Code, is amended—

(1) by redesignating subsection (b) as subsection (e);

(2) in subsection (a)—

(A) by striking out "(a)(1)" and inserting in lieu thereof "(a) CLAIMS AGAINST THE UNITED STATES.—";

(B) in paragraph (2), by striking out "(2) To" and inserting in lieu thereof "(b) REMEDY AND RELIEF.—To"; and

(C) by striking out paragraph (3); and

(3) by inserting after subsection (b), as designated by paragraph (2)(B), the following new subsection (c):

"(c) BID PROTESTS.—(1) The United States Court of Federal Claims has jurisdiction to render judgment on an action by an interested party objecting to a solicitation by a Federal agency for bids or proposals for a proposed contract or to a proposed award or the award of a contract. The court has jurisdiction to entertain such an action without regard to whether suit is instituted before or after the contract is awarded.

"(2) To afford relief in such an action, the court may award any relief that the court considers proper, including declaratory and injunctive relief.

"(3) In exercising jurisdiction under this subsection, the court shall give due regard to the interests of national defense and national security and the need for expeditious resolution of the action.

"(4) The district courts of the United States do not have jurisdiction of any action referred to in paragraph (1).".

(b) CLERICAL AMENDMENTS.—

(1) SECTION HEADING.—The heading of such section is amended by inserting "**BID PROTESTS;**" after "**GENERALLY;**".

(2) TABLE OF SECTIONS.—The table of sections at the beginning of chapter 91 of title 28, United States Code, is amended by striking out the item relating to section 1491 and inserting in lieu thereof the following:

"1491. Claims against United States generally; bid protests; actions involving Tennessee Valley Authority.".

PART III—PROTESTS IN PROCUREMENTS OF AUTOMATIC DATA PROCESSING

SEC. 1431. REVOCATION OF DELEGATIONS OF PROCUREMENT AUTHORITY.

Section 111(b)(3) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 759(b)(3)) is amended by inserting after the third sentence the following: "The Administrator may revoke a delegation of authority with respect to a particular contract before or after award of the contract, except that the Administrator may revoke a delegation after the contract is awarded only when there is a finding of a violation of law or regulation in connection with the contract award.".

SEC. 1432. AUTHORITY OF THE GENERAL SERVICES ADMINISTRATION BOARD OF CONTRACT APPEALS.

The first sentence of section 111(f)(1) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 759(f)(1)) is amended to read as follows: "Upon request of an interested party in connection with any procurement that is subject to this section (including any such procurement that is subject to delegation of procurement authority), the board of contract appeals of the General Services Administration (hereafter in this subsection referred to as the 'board') shall review, as provided in this subsection, any decision by a contracting officer that is alleged to violate a statute, a regulation, or the conditions of a delegation of procurement authority.".

SEC. 1433. PERIODS FOR CERTAIN ACTIONS.

(a) SUSPENSION OF PROCUREMENT AUTHORITY.—Section 111(f) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 759(f)) is amended—

(1) in paragraph (2) by adding at the end the following new subparagraph:

"(C) If, in the case of a preaward protest, the board suspends the procurement authority of the Administrator or the Administrator's delegation of procurement authority, the Administrator or the delegate, as the case may be, may continue with the procurement action up to, but not including, the awarding of the contract if the Administrator or the delegate, as the case may be, determines that it is in the best interests of the United States to do so."; and

(2) in paragraph (3) by striking out subparagraph (A) and inserting in lieu thereof the following:

"(A)(i) If, with respect to an award of a contract, the board receives notice of a protest under this subsection within the period described in clause (ii), the board shall, at the request of an interested party, hold a hearing to determine whether the board should suspend the procurement authority of the Administrator or the Administrator's delegation of procurement authority for the protested procurement on an interim basis until the board can decide the protest.

"(ii) The period referred to in clause (i) is the period beginning on the date on which the contract is awarded and ending on the date that is 10 days after the date of the contract award or, if later, the date that is 5 days after—

"(I) the debriefing date offered to an unsuccessful offeror for any debriefing that is requested and, when requested, is required; or

"(II) in the case of a contract for which no debriefing is required, the date on which the unsuccessful offeror receives the notification of contract award.

"(iii) The board shall hold the requested hearing within 5 days after the date of the filing of the protest or, in the case of a request for debriefing under the provisions of section 2305(b)(5) of title 10, United States Code, or section 303B(e) of this Act, within 5 days after the later of the date of the filing of the protest or the date of the debriefing.".

(b) FINAL DECISION.—Paragraph (4)(B) of such section 111(f) is amended—

(1) by striking out "45 working days" and inserting in lieu thereof "65 days"; and

(2) by adding at the end the following: "An amendment which adds a new ground of protest should be resolved, to the maximum extent practicable, within the time limits established for resolution of the initial protest.".

SEC. 1434. DISMISSALS OF PROTESTS.

Section 111(f)(4) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 759(f)(4)) is amended by striking out subparagraph (C) and inserting in lieu thereof the following:

"(C) The board may dismiss a protest that the board determines—

"(i) is frivolous;

"(ii) has been brought in bad faith; or

"(iii) does not state on its face a valid basis for protest.".

SEC. 1435. AWARD OF COSTS.

Section 111(f)(5) is amended by striking out subparagraph (C) and inserting in lieu thereof the following:

"(C) Whenever the board makes such a determination, it may, in accordance with section 1304 of title 31, United States Code, further declare an appropriate prevailing party to be entitled to the cost of filing and pursuing the protest (including reasonable attorney's fees and consultant and expert witness fees), and bid and proposal preparation. However, no party may be declared entitled to costs for consultant and expert witness fees that exceed the rates provided under section 504(b)(1)(A) of title 5, United States Code, for expert witnesses or to costs for attorney's fees that exceed the rates provided for attorneys under section 504(b)(1)(A) of title 5, United States Code.".

SEC. 1436. DISMISSAL AGREEMENTS.

Section 111(f)(5) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 759(f)(5)) is amended by adding at the end the following new subparagraphs:

"(D) Any agreement that provides for the dismissal of a protest and involves a direct or indirect expenditure of appropriated funds shall be submitted to the board and shall be made a part of the public record (subject to any protective order considered appropriate by the board) before dismissal of the protest. If a Federal agency is a party to a settlement agreement, the submission of the agreement submitted to the board shall include a memorandum, signed by the contracting officer concerned, that describes in detail the procurement, the grounds for protest, the Federal Government's position regarding the grounds for protest, the terms of the settlement, and the agency's position regarding the propriety of the award or proposed award of the contract at issue in the protest.

"(E) Payment of amounts due from an agency under subparagraph (C) or under the terms of a settlement agreement under subparagraph (D) shall be made from the appropriation made by section 1304 of title 31, United States Code, for the payment of judgments. The Federal agency concerned shall reimburse that appropriation account out of funds available for the procurement.".

SEC. 1437. JURISDICTION OF DISTRICT COURTS.

Section 111(f)(6)(C) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 759(f)(6)(C)) is amended by striking out "a district court of the United States or".

SEC. 1438. MATTERS TO BE COVERED IN REGULATIONS.

Section 111(f) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 759(f)) is amended by striking out paragraph (8) and inserting in lieu thereof the following:

"(7)(A) The board shall adopt and issue such rules and procedures as may be necessary to the expeditious disposition of protests filed under the authority of this subsection.

"(B) The procedures shall provide that, in the computation of any period described in this subsection—

"(i) the day of the act, event, or default from which the designated period of time begins to run not be included; and

"(ii) the last day after such act, event, or default be included, unless—

"(I) such last day is a Saturday, a Sunday, or a legal holiday; or

"(II) in the case of a filing of a paper at the board, such last day is a day on which weather or other conditions cause the closing of the board or Federal agency, in which event the next day that is not a Saturday, Sunday, or legal holiday shall be included.

"(C) The procedures may provide for electronic filing and dissemination of documents and information required under this subsection and in so providing shall consider the ability of all parties to achieve electronic access to such documents and records.

"(D) The procedures shall provide that if the board expressly finds that a protest or a portion of a protest is frivolous or has not been brought or pursued in good faith, or that any person has willfully abused the board's process during the course of a protest, the board may impose appropriate procedural sanctions, including dismissal of the protest.".

SEC. 1439. DEFINITIONS.

(a) PROTEST.—Section 111(f)(9)(A) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 759(f)(9)(A)) is amended to read as follows:

"(A) the term 'protest' means a written objection by an interested party—

"(i) to a solicitation or other request by a Federal agency for offers for a contract for the procurement of property or services;

"(ii) to the cancellation of such a solicitation or other request;

"(iii) to an award or proposed award of such a contract; or

"(iv) to a termination or cancellation of an award of such a contract, if the written objection contains an allegation that the termination or cancellation is based in whole or in part on improprieties concerning the award of the contract;".

(b) PREVAILING PARTY.—Section 111(f)(9) of such Act is amended—

(1) by striking out "and" at the end of subparagraph (A);

(2) by striking out the period at the end of subparagraph (B) and inserting in lieu thereof "; and"; and

(3) by adding at the end the following new subparagraph:

"(C) the term 'prevailing party', with respect to a determination of the board under paragraph (5)(B) that a challenged action of a Federal agency violates a statute or regulation or the conditions of a delegation of procurement authority issued pursuant to this section, means a party that demonstrated such violation.".

Subtitle E—Definitions and Other Matters

PART I—ARMED SERVICES ACQUISITIONS

SEC. 1501. DEFINITIONS.

Section 2302 of title 10, United States Code, is amended—

(1) by striking out paragraphs (3), (4), (5), and (7);

(2) by redesignating paragraph (6) as paragraph (5); and

(3) by inserting after paragraph (2) the following:

"(3) The terms 'commercial item', 'full and open competition', 'major system', 'nondevelopmental item', 'procurement', 'procurement system', 'responsible source', 'standards', and 'technical data', have the meanings given such terms in section 4 of the Office of Federal Procurement Policy Act (41 U.S.C. 403).

"(4) The term 'simplified acquisition threshold' has the meaning given that term in section 4 of the Office of Federal Procurement Policy Act (41 U.S.C. 403), except that, in the case of any contract to be awarded and performed, or purchase to be made, outside the United States in support of a contingency operation, the term means an amount equal to two times the amount specified for that term in section 4 of such Act.".

SEC. 1502. DELEGATION OF PROCUREMENT FUNCTIONS.

(a) CONSOLIDATION OF DELEGATION AUTHORITY.—Section 2311 of title 10, United States Code, is amended to read as follows:

"§2311. Delegation

"(a) IN GENERAL.—Except to the extent expressly prohibited by another provision of law, the head of an agency may delegate, subject to his direction, to any other officer or official of that agency, any power under this chapter.

"(b) PROCUREMENTS FOR OR WITH OTHER AGENCIES.—Subject to subsection (a), to facilitate the procurement of property and services covered by this chapter by each agency named in section 2303 of this title for any other agency, and to facilitate joint procurement by those agencies—

"(1) the head of an agency may, within his agency, delegate functions and assign responsibilities relating to procurement;

"(2) the heads of two or more agencies may by agreement delegate procurement functions and assign procurement responsibilities from one agency to another of those agencies or to an officer or civilian employee of another of those agencies; and

"(3) the heads of two or more agencies may create joint or combined offices to exercise procurement functions and responsibilities.

"(c) APPROVAL OF TERMINATIONS AND REDUCTIONS OF JOINT ACQUISITION PROGRAMS.—(1) The Secretary of Defense shall prescribe regulations that prohibit each military department participating in a joint acquisition program approved by the Under Secretary of Defense for Acquisition and Technology from terminating or substantially reducing its participation in such program without the approval of the Under Secretary.

"(2) The regulations shall include the following provisions:

"(A) A requirement that, before any such termination or substantial reduction in participation is approved, the proposed termination or reduction be reviewed by the Joint Requirements Oversight Council of the Department of Defense.

"(B) A provision that authorizes the Under Secretary of Defense for Acquisition and Technology to require a military department approved for termination or substantial reduction in participation in a joint acquisition program to continue to provide some or all of the funding necessary for the acquisition program to be continued in an efficient manner.".

(b) CONFORMING REPEAL.—(1) Section 2308 of title 10, United States Code, is repealed.

(2) The table of sections at the beginning of chapter 137 of such title is amended by striking out the item related to section 2308.

SEC. 1503. DETERMINATIONS AND DECISIONS.

Section 2310 of title 10, United States Code, is amended to read as follows:

"§2310. Determinations and decisions

"(a) INDIVIDUAL OR CLASS DETERMINATIONS AND DECISIONS AUTHORIZED.—Determinations and decisions required to be made under this chapter by the head of an agency may be made for an individual purchase or contract or for a class of purchases or contracts. Such determinations and decisions are final.

"(b) WRITTEN FINDINGS REQUIRED.—(1) Each determination or decision under section 2306(e)(1), 2307(e), or 2313(d)(2) of this title shall be based on a written finding by the person making the determination or decision. The finding shall set out facts and circumstances that support the determination or decision.

"(2) Each finding referred to in paragraph (1) shall be final. The head of the agency making such finding shall maintain a copy of the finding for not less than 6 years after the date of the determination or decision.".

SEC. 1504. UNDEFINITIZED CONTRACTUAL ACTIONS: RESTRICTIONS.

(a) CLARIFICATION OF LIMITATION.—Subsection (b) of section 2326 of title 10, United States Code, is amended—

(1) in the subsection caption, by striking out "AND EXPENDITURE";

(2) in paragraph (1)(B), by striking out "or expended";

(3) in paragraph (2), by striking out "expend" and inserting in lieu thereof "obligate"; and

(4) in paragraph (3)—

(A) by striking out "expended" and inserting in lieu thereof "obligated"; and

(B) by striking out "expend" and inserting in lieu thereof "obligate".

(b) WAIVER AUTHORITY.—Such subsection is amended—

(1) by redesignating paragraph (4) as paragraph (5); and

(2) by inserting after paragraph (3) the following new paragraph (4):

"(4) The head of an agency may waive the provisions of this subsection with respect to a contract of that agency if such head of an agency determines that the waiver is necessary in order to support a contingency operation.".

(c) INAPPLICABILITY OF RESTRICTIONS TO CONTRACTS WITHIN THE SIMPLIFIED ACQUISITION THRESHOLD.—Section 2326(g)(1)(B) of title 10, United States Code, is amended by striking out "small purchase threshold" and inserting in lieu thereof "simplified acquisition threshold".

SEC. 1505. PRODUCTION SPECIAL TOOLING AND PRODUCTION SPECIAL TEST EQUIPMENT: CONTRACT TERMS AND CONDITIONS.

(a) REPEAL.—Section 2329 of title 10, United States Code, is repealed.

(b) TECHNICAL AMENDMENT.—The table of sections at the beginning of chapter 137 of such title is amended by striking out the item related to section 2329.

SEC. 1506. REGULATIONS FOR BIDS.

Section 2381(a) of title 10, United States Code, is amended by striking out "(a) The Secretary" and all that follows through the end of paragraph (1) and inserting in lieu thereof the following:

"(a) The Secretary of Defense or the Secretary of a military department may—

"(1) prescribe regulations for the preparation, submission, and opening of bids for contracts; and".

PART II—CIVILIAN AGENCY ACQUISITIONS

SEC. 1551. DEFINITIONS.

Section 309(c) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 259(c)) is amended by striking out "and 'supplies'" and inserting in lieu thereof "'supplies', 'commercial item', 'nondevelopmental item', and 'simplified acquisition threshold'".

SEC. 1552. DELEGATION OF PROCUREMENT FUNCTIONS.

(a) AUTHORITY.—Title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.) is amended—

(1) by redesignating sections 309 and 310 as sections 312 and 313, respectively; and

(2) by inserting after section 308 the following new section 309:

"DELEGATION

"SEC. 309. (a) IN GENERAL.—Except to the extent expressly prohibited by another provision of law, an agency head may delegate, subject to his direction, to any other officer or official of that agency, any power under this title.

"(b) PROCUREMENTS FOR OR WITH OTHER AGENCIES.—Subject to subsection (a), to facilitate the procurement of property and services covered by this title by each executive agency for any other executive agency, and to facilitate joint procurement by those executive agencies—

"(1) an agency head may, within his executive agency, delegate functions and assign responsibilities relating to procurement;

"(2) the heads of two or more executive agencies may by agreement delegate procurement functions and assign procurement responsibilities from one executive agency to another of those executive agencies or to an officer or civilian employee of another of those executive agencies; and

"(3) the heads of two or more executive agencies may create joint or combined offices to exercise procurement functions and responsibilities.".

(b) CLERICAL AMENDMENT.—The table of contents in the first section of such Act is amended by striking out the items relating to sections 309 and 310 and inserting in lieu thereof the following:

"Sec. 309. Delegation.
"Sec. 312. Definitions.
"Sec. 313. Statutes not applicable.".

SEC. 1553. DETERMINATIONS AND DECISIONS.

(a) IN GENERAL.—Title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.), as amended by section 1552, is further amended by inserting after section 309 the following new section 310:

"DETERMINATIONS AND DECISIONS

"SEC. 310. (a) INDIVIDUAL OR CLASS DETERMINATIONS AND DECISIONS AUTHORIZED.—Determinations and decisions required to be made under this title by an agency head may be made for an individual purchase or contract or for a class of purchases or contracts. Such determinations and decisions are final.

"(b) WRITTEN FINDINGS REQUIRED.—(1) Each determination under section 305(e) shall be based on a written finding by the person making the determination or decision. The finding shall set out facts and circumstances that support the determination or decision.

"(2) Each finding referred to in paragraph (1) shall be final. The agency head making such finding shall maintain a copy of the finding for not less than 6 years after the date of the determination or decision.".

(b) CLERICAL AMENDMENT.—The table of contents in the first section of such Act, as amended by section 1552, is further amended by inserting after the item relating to section 309 the following:

"Sec. 310. Determinations and decisions.".

SEC. 1554. COOPERATIVE PURCHASING.

Subsection (b) of section 201 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 481), is amended to read as follows:

"(b)(1) The Administrator shall, as far as practicable, provide any of the services specified in subsection (a) of this section to any other Federal agency, mixed-ownership Government corporation (as defined in section 9101 of title 31, United States Code), or the District of Columbia, upon its request.

"(2)(A) The Administrator may provide for the use of Federal supply schedules or other contracts by any of the following entities upon request:

"(i) A State, any department or agency of a State, and any political subdivision of a State, including a local government.

"(ii) The District of Columbia.

"(iii) The Commonwealth of Puerto Rico.

"(iv) The government of an Indian tribe (as defined in section 4(e) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b(e))).

"(B) Subparagraph (A) may not be construed to authorize an entity referred to in that subparagraph to order existing stock or inventory from federally owned and operated, or federally owned and contractor operated, supply depots, warehouses, or similar facilities.

"(3)(A) Upon the request of a qualified nonprofit agency for the blind or other severely handicapped that is to provide a commodity or service to the Federal Government under the Javits-Wagner-O'Day Act, the Administrator may provide any of the services specified in subsection (a) to such agency to the extent practicable.

"(B) A nonprofit agency receiving services under the authority of subparagraph (A) shall use the services directly in making or providing an approved commodity or approved service to the Federal Government.

"(C) In this paragraph:

"(i) The term 'qualified nonprofit agency for the blind or other severely handicapped' means—

"(I) a qualified nonprofit agency for the blind, as defined in section 5(3) of the Javits-Wagner-O'Day Act (41 U.S.C. 48b(3)); and

"(II) a qualified nonprofit agency for other severely handicapped, as defined in section 5(4) of such Act (41 U.S.C. 48b(4)).

"(ii) The terms 'approved commodity' and 'approved service' mean a commodity and a service, respectively, that has been determined by the Committee for Purchase from the Blind and Other Severely Handicapped under section 2 of the Javits-Wagner-O'Day Act (41 U.S.C. 47) to be suitable for procurement by the Federal Government.

"(iii) The term 'Javits-Wagner-O'Day Act' means the Act entitled 'An Act to create a Committee on Purchases of Blind-made Products, and for other purposes', approved June 25, 1938 (41 U.S.C. 46–48c), commonly referred to as the Wagner-O'Day Act, that was revised and reenacted in the Act of June 23, 1971 (85 Stat. 77), commonly referred to as the Javits-Wagner-O'Day Act.".

TITLE II—CONTRACT ADMINISTRATION

Subtitle A—Contract Payment

PART I—ARMED SERVICES ACQUISITIONS

SEC. 2001. CONTRACT FINANCING.

(a) REORGANIZATION OF PRINCIPAL AUTHORITY PROVISION.—Section 2307 of title 10, United States Code, is amended—

(1) by striking out the section heading and inserting in lieu thereof the following:

"§2307. Contract financing";

(2) by striking out "(a) The head of an agency" and inserting in lieu thereof "(b) PAYMENT AUTHORITY.—The head of an agency";

(3) by striking out "(b) Payments" and inserting in lieu thereof "(d) PAYMENT AMOUNT.—Payments";

(4) by striking out "(c) Advance payments" and inserting in lieu thereof "(e) SECURITY FOR ADVANCE PAYMENTS.—Advance payments";

(5) by striking out "(d)(1) The Secretary of Defense" and inserting in lieu thereof "(f) CONDITIONS FOR PROGRESS PAYMENTS.—(1) The Secretary of Defense"; and

(6) by striking out "(e)(1) In any case" and inserting in lieu thereof "(h) ACTION IN CASE OF FRAUD.—(1) In any case".

(b) FINANCING POLICY.—Such section, as amended by subsection (a), is further amended by inserting after the section heading the following new subsection (a):

"(a) POLICY.—Payments authorized under this section and made for financing purposes

should be made periodically or, when appropriate, on an advance basis and should be so made in a timely manner to facilitate contract performance while protecting the security interests of the Government. Government financing shall be provided only to the extent necessary to ensure prompt and efficient performance and only after the availability of private financing is considered. A contractor's use of funds received as contract financing and the contractor's financial condition shall be monitored. If the contractor is a small business concern, special attention shall be given to meeting the contractor's financial need.".

(c) PERFORMANCE-BASED PAYMENTS.—Such section, as amended by subsection (a), is further amended by inserting after subsection (b) the following new subsection (c):

"(c) PERFORMANCE-BASED PAYMENTS.—Whenever practicable, payments under subsection (b) shall be made on any of the following bases:

"(1) Performance measured by objective, quantifiable methods such as receipt of items by the Federal Government, work measurement, or statistical process controls.

"(2) Accomplishment of events defined in the program management plan.

"(3) Other quantifiable measures of results.".

(d) TERMINOLOGY CORRECTION.—Such section, as amended by subsection (a)(2), is further amended in subsection (b)(2) by striking out "bid".

(e) EFFECTIVE DATE OF LIEN RELATED TO ADVANCE PAYMENTS.—Such section, as amended by subsection (a)(4), is further amended in subsection (e) by inserting before the period at the end of the third sentence the following: "and is effective immediately upon the first advancement of funds without filing, notice, or any other action by the United States".

(f) CONDITIONS FOR PROGRESS PAYMENTS.—Such section, as amended by subsection (a)(5), is further amended in subsection (f)—

(1) in the first sentence of paragraph (1), by striking out "work, which" and all that follows through "accomplished" and inserting in lieu thereof "work accomplished that meets standards established under the contract"; and

(2) by striking out paragraph (3) and inserting in lieu thereof the following:

"(3) This subsection applies to a contract for an amount equal to or greater than the simplified acquisition threshold.".

(g) NAVY CONTRACTS.—Such section, as amended by subsection (a)(5), is further amended by inserting after subsection (f) the following new subsection (g):

"(g) CERTAIN NAVY CONTRACTS.—(1) The Secretary of the Navy shall provide that the rate for progress payments on any contract awarded by the Secretary for repair, maintenance, or overhaul of a naval vessel shall be not less than—

"(A) 95 percent, in the case of firms considered to be small businesses; and

"(B) 90 percent, in the case of all other firms.

"(2) The Secretary of the Navy may advance to private salvage companies such funds as the Secretary considers necessary to provide for the immediate financing of salvage operations. Advances under this paragraph shall be made on terms that the Secretary considers adequate for the protection of the United States.

"(3) The Secretary of the Navy shall ensure that, when partial, progress, or other payments are made under a contract for construction or conversion of a naval vessel, the United States is secured by a lien upon work in progress and on property acquired for performance of the contract on account of all payments so made. The lien is paramount to all other liens.".

(h) CONFORMING AND CLERICAL AMENDMENTS.—

(1) CROSS REFERENCE.—Such section, as amended by subsection (a), is further amended in subsections (d) and (e) by striking out "subsection (a)" and inserting in lieu thereof "subsection (b)".

(2) TABLE OF CONTENTS.—The table of sections at the beginning of chapter 137 of title 10, United States Code, is amended by striking out the item relating to section 2307 and inserting in lieu thereof the following:

"2307. Contract financing.".

(i) REPEAL OF SUPERSEDED PROVISIONS.—

(1) PROGRESS PAYMENTS UNDER CERTAIN NAVY CONTRACTS.—

(A) REPEAL.—Section 7312 of title 10, United States Code, is repealed.

(B) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 633 of such title is amended by striking out the item relating to section 7312.

(2) ADVANCEMENT OF PAYMENTS FOR NAVY SALVAGE OPERATIONS.—

(A) REPEAL.—Section 7364 of such title is repealed.

(B) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 637 of such title is amended by striking out the item relating to section 7364.

(3) PARTIAL PAYMENTS UNDER NAVY CONTRACTS.—

(A) REPEAL.—Section 7521 of such title is repealed.

(B) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 645 of such title is amended by striking out the item relating to section 7521.

SEC. 2002. CONTRACTS: VOUCHERING PROCEDURES.

(a) REPEAL.—Section 2355 of title 10, United States Code, is repealed.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 139 of such title is amended by striking out the item relating to section 2355.

PART II—CIVILIAN AGENCY ACQUISITIONS

SEC. 2051. CONTRACT FINANCING.

(a) REORGANIZATION OF PRINCIPAL AUTHORITY PROVISION.—Section 305 of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 255) is amended—

(1) by striking out the section heading and inserting in lieu thereof the following:

"CONTRACT FINANCING";

(2) by striking out "(a) Any executive agency" and inserting in lieu thereof "(b) PAYMENT AUTHORITY.—Any executive agency";

(3) by striking out "(b) Payments" and inserting in lieu thereof "(d) PAYMENT AMOUNT.—Payments"; and

(4) by striking out "(c) Advance payments" and inserting in lieu thereof "(e) SECURITY FOR ADVANCE PAYMENTS.—Advance payments".

(b) FINANCING POLICY.—Such section, as amended by subsection (a), is further amended by inserting after the section heading the following new subsection (a):

"(a) POLICY.—Payments authorized under this section and made for financing purposes should be made periodically or, when appropriate, on an advance basis and should be so made in a timely manner to facilitate contract performance while protecting the security interests of the Government. Government financing shall be provided only to the extent necessary to ensure prompt and efficient performance and only after the availability of private financing is considered. A contractor's use of funds received as contract financing and the contractor's financial condition shall be monitored. If the contractor is a small business concern, special attention shall be given to meeting the contractor's financial need.".

(c) PERFORMANCE-BASED PAYMENTS.—Such section, as amended by subsection (a), is further amended by inserting after subsection (b) the following new subsection (c):

"(c) PERFORMANCE-BASED PAYMENTS.—Whenever practicable, payments under subsection (b) shall be made on any of the following bases:

"(1) Performance measured by objective, quantifiable methods such as receipt of items by the Federal Government, work measurement, or statistical process controls.

"(2) Accomplishment of events defined in the program management plan.

"(3) Other quantifiable measures of results.".

(d) TERMINOLOGY CORRECTION.—Such section, as amended by subsection (a)(2), is further amended in subsection (b)(2) by striking out "bid".

(e) EFFECTIVE DATE OF LIEN RELATED TO ADVANCE PAYMENTS.—Such section, as amended by subsection (a)(4), is further amended in subsection (e) by inserting before the period at the end of the third sentence the following: "and is effective immediately upon the first advancement of funds without filing, notice, or any other action by the United States".

(f) REVISION OF CIVILIAN AGENCY PROVISION TO ENSURE UNIFORM REQUIREMENTS FOR PROGRESS PAYMENTS.—

(1) IN GENERAL.—Such section, as amended by subsection (a), is further amended by adding at the end the following:

"(f) CONDITIONS FOR PROGRESS PAYMENTS.—(1) The agency head shall ensure that any payment for work in progress (including materials, labor, and other items) under a contract of an executive agency that provides for such payments is commensurate with the work accomplished that meets standards established under the contract. The contractor shall provide such information and evidence as the agency head determines necessary to permit the agency head to carry out the preceding sentence.

"(2) The agency head shall ensure that progress payments referred to in paragraph (1) are not made for more than 80 percent of the work accomplished under the contract so long as the agency head has not made the contractual terms, specifications, and price definite.

"(3) This subsection applies to a contract for an amount equal to or greater than the simplified acquisition threshold.

"(g) ACTION IN CASE OF FRAUD.—(1) In any case in which the remedy coordination official of an executive agency finds that there is substantial evidence that the request of a contractor for advance, partial, or progress payment under a contract awarded by that executive agency is based on fraud, the remedy coordination official shall recommend that the agency head reduce or suspend further payments to such contractor.

"(2) An agency head receiving a recommendation under paragraph (1) in the case of a contractor's request for payment under a contract shall determine whether there is substantial evidence that the request is based on fraud. Upon making such a determination, the agency head may reduce or suspend further payments to the contractor under such contract.

"(3) The extent of any reduction or suspension of payments by an agency head under paragraph (2) on the basis of fraud shall be reasonably commensurate with the anticipated loss to the United States resulting from the fraud.

"(4) A written justification for each decision of the agency head whether to reduce or suspend payments under paragraph (2), and for each recommendation received by the agency head in connection with such decision, shall be prepared and be retained in the files of the executive agency.

"(5) Each agency head shall prescribe procedures to ensure that, before the agency head decides to reduce or suspend payments in the case of a contractor under paragraph (2), the contractor is afforded notice of the proposed reduction or suspension and an opportunity to submit

matters to the head of the agency in response to such proposed reduction or suspension.

"(6) Not later than 180 days after the date on which an agency head reduces or suspends payments to a contractor under paragraph (2), the remedy coordination official of the executive agency shall—

"(A) review the determination of fraud on which the reduction or suspension is based; and

"(B) transmit a recommendation to the agency head whether the suspension or reduction should continue.

"(7) Each agency head who receives recommendations made by a remedy coordination official of the executive agency to reduce or suspend payments under paragraph (2) during a fiscal year shall prepare for such year a report that contains the recommendations, the actions taken on the recommendations and the reasons for such actions, and an assessment of the effects of such actions on the Federal Government. Any such report shall be available to any Member of Congress upon request.

"(8) An agency head may not delegate responsibilities under this subsection to any person in a position below level IV of the Executive Schedule.

"(9) In this subsection, the term 'remedy coordination official', with respect to an executive agency, means the person or entity in that executive agency who coordinates within that executive agency the administration of criminal, civil, administrative, and contractual remedies resulting from investigations of fraud or corruption related to procurement activities.".

(2) RELATIONSHIP TO PROMPT PAYMENT REQUIREMENTS.—The amendments made by paragraph (1) are not intended to impair or modify procedures required by the provisions of chapter 39 of title 31, United States Code, and the regulations issued pursuant to such provisions of law, that relate to progress payment requests, as such procedures are in effect on the date of the enactment of this Act.

(g) CONFORMING AND CLERICAL AMENDMENTS.—

(1) REFERENCE.—Section 305 of the Federal Property and Administrative Services Act of 1949, as amended by subsection (a), is further amended in subsections (d) and (e) by striking out "subsection (a)" and inserting in lieu thereof "subsection (b)".

(2) TABLE OF CONTENTS.—The table of contents in the first section of such Act is amended by striking out the item relating to section 305 and inserting in lieu thereof the following:

"Sec. 305. Contract financing.".

Subtitle B—Cost Principles

PART I—ARMED SERVICES ACQUISITIONS

SEC. 2101. ALLOWABLE CONTRACT COSTS.

(a) COMPTROLLER GENERAL EVALUATION.—Section 2324 is amended by striking out subsection (l).

(b) COVERED CONTRACT DEFINED.—Subsection (m) of section 2324 of title 10, United States Code, is amended to read as follows:

"(l)(1) In this section, the term 'covered contract' means a contract for an amount in excess of $500,000 that is entered into by the Department of Defense, except that such term does not include a fixed-price contract without cost incentives.

"(2) Effective on October 1 of each year that is divisible by 5, the amount set forth in paragraph (1) shall be adjusted to the amount that is equal to the fiscal year 1994 constant dollar value of the amount set forth. An amount, as so adjusted, that is not evenly divisible by $50,000 shall be rounded to the nearest multiple of $50,000. In the case of an amount that is evenly divisible by $25,000 but is not evenly divisible by $50,000, the amount shall be rounded to the next higher multiple of $50,000.".

SEC. 2102. CONTRACT PROFIT CONTROLS DURING EMERGENCY PERIODS.

(a) REPEAL.—Section 2382 of title 10, United States Code, is repealed.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 141 of such title is amended by striking out the item relating to section 2382.

PART II—CIVILIAN AGENCY ACQUISITIONS

SEC. 2151. ALLOWABLE CONTRACT COSTS.

(a) REVISION OF CIVILIAN AGENCY PROVISION TO ENSURE UNIFORM TREATMENT OF CONTRACT COSTS.—Section 306 of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 256) is amended to read as follows:

"ALLOWABLE COSTS

"SEC. 306. (a) INDIRECT COST THAT VIOLATES A FAR COST PRINCIPLE.—The head of an executive agency shall require that a covered contract provide that if the contractor submits to the executive agency a proposal for settlement of indirect costs incurred by the contractor for any period after such costs have been accrued and if that proposal includes the submission of a cost which is unallowable because the cost violates a cost principle in the Federal Acquisition Regulation or an executive agency's supplement to the Federal Acquisition Regulation, the cost shall be disallowed.

"(b) PENALTY FOR VIOLATION OF COST PRINCIPLE.—(1) If the agency head determines that a cost submitted by a contractor in its proposal for settlement is expressly unallowable under a cost principle referred to in subsection (a) that defines the allowability of specific selected costs, the agency head shall assess a penalty against the contractor in an amount equal to—

"(A) the amount of the disallowed cost allocated to covered contracts for which a proposal for settlement of indirect costs has been submitted; plus

"(B) interest (to be computed based on regulations issued by the agency head) to compensate the United States for the use of any funds which a contractor has been paid in excess of the amount to which the contractor was entitled.

"(2) If the agency head determines that a proposal for settlement of indirect costs submitted by a contractor includes a cost determined to be unallowable in the case of such contractor before the submission of such proposal, the agency head shall assess a penalty against the contractor in an amount equal to two times the amount of the disallowed cost allocated to covered contracts for which a proposal for settlement of indirect costs has been submitted.

"(c) WAIVER OF PENALTY.—In accordance with the Federal Acquisition Regulation, the agency head may waive a penalty under subsection (b) in the case of a contractor's proposal for settlement of indirect costs when—

"(1) the contractor withdraws the proposal before the formal initiation of an audit of the proposal by the Federal Government and resubmits a revised proposal;

"(2) the amount of unallowable costs subject to the penalty is insignificant; or

"(3) the contractor demonstrates, to the contracting officer's satisfaction, that—

"(A) it has established appropriate policies and personnel training and an internal control and review system that provide assurances that unallowable costs subject to penalties are precluded from being included in the contractor's proposal for settlement of indirect costs; and

"(B) the unallowable costs subject to the penalty were inadvertently incorporated into the proposal.

"(d) APPLICABILITY OF CONTRACT DISPUTES PROCEDURE TO DISALLOWANCE OF COST AND ASSESSMENT OF PENALTY.—An action of an agency head under subsection (a) or (b)—

"(1) shall be considered a final decision for the purposes of section 6 of the Contract Disputes Act of 1978 (41 U.S.C. 605); and

"(2) is appealable in the manner provided in section 7 of such Act.

"(e) SPECIFIC COSTS NOT ALLOWABLE.—(1) The following costs are not allowable under a covered contract:

"(A) Costs of entertainment, including amusement, diversion, and social activities, and any costs directly associated with such costs (such as tickets to shows or sports events, meals, lodging, rentals, transportation, and gratuities).

"(B) Costs incurred to influence (directly or indirectly) legislative action on any matter pending before Congress or a State legislature.

"(C) Costs incurred in defense of any civil or criminal fraud proceeding or similar proceeding (including filing of any false certification) brought by the United States where the contractor is found liable or had pleaded nolo contendere to a charge of fraud or similar proceeding (including filing of a false certification).

"(D) Payments of fines and penalties resulting from violations of, or failure to comply with, Federal, State, local, or foreign laws and regulations, except when incurred as a result of compliance with specific terms and conditions of the contract or specific written instructions from the contracting officer authorizing in advance such payments in accordance with the Federal Acquisition Regulation.

"(E) Costs of membership in any social, dining, or country club or organization.

"(F) Costs of alcoholic beverages.

"(G) Contributions or donations, regardless of the recipient.

"(H) Costs of advertising designed to promote the contractor or its products.

"(I) Costs of promotional items and memorabilia, including models, gifts, and souvenirs.

"(J) Costs for travel by commercial aircraft which exceed the amount of the standard commercial fare.

"(K) Costs incurred in making any payment (commonly known as a 'golden parachute payment') which is—

"(i) in an amount in excess of the normal severance pay paid by the contractor to an employee upon termination of employment; and

"(ii) is paid to the employee contingent upon, and following, a change in management control over, or ownership of, the contractor or a substantial portion of the contractor's assets.

"(L) Costs of commercial insurance that protects against the costs of the contractor for correction of the contractor's own defects in materials or workmanship.

"(M) Costs of severance pay paid by the contractor to foreign nationals employed by the contractor under a service contract performed outside the United States, to the extent that the amount of severance pay paid in any case exceeds the amount paid in the industry involved under the customary or prevailing practice for firms in that industry providing similar services in the United States, as determined in accordance with the Federal Acquisition Regulation.

"(N) Costs of severance pay paid by the contractor to a foreign national employed by the contractor under a service contract performed in a foreign country if the termination of the employment of the foreign national is the result of the closing of, or the curtailment of activities at, a United States facility in that country at the request of the government of that country.

"(O) Costs incurred by a contractor in connection with any criminal, civil, or administrative proceeding commenced by the United States or a State, to the extent provided in subsection (k).

"(2)(A) Subject to the availability of appropriations, the head of an executive agency, in

awarding a covered contract, may waive in accordance with the Federal Acquisition Regulation the application of the provisions of paragraphs (1)(M) and (1)(N) to that contract if the agency head determines that—

"(i) the application of such provisions to the contract would adversely affect the continuation of a program, project, or activity that provides significant support services for employees of the executive agency posted outside the United States;

"(ii) the contractor has taken (or has established plans to take) appropriate actions within the contractor's control to minimize the amount and number of incidents of the payment of severance pay by the contractor to employees under the contract who are foreign nationals; and

"(iii) the payment of severance pay is necessary in order to comply with a law that is generally applicable to a significant number of businesses in the country in which the foreign national receiving the payment performed services under the contract or is necessary to comply with a collective bargaining agreement.

"(B) The head of the executive agency concerned shall include in the solicitation for a covered contract a statement indicating—

"(i) that a waiver has been granted under subparagraph (A) for the contract; or

"(ii) whether the agency head will consider granting such a waiver, and, if the agency head will consider granting a waiver, the criteria to be used in granting the waiver.

"(C) The agency head shall make the final determination regarding whether to grant a waiver under subparagraph (A) with respect to a covered contract before award of the contract.

"(3) The head of each executive agency shall implement this section with respect to contracts of that executive agency in accordance with the Federal Acquisition Regulation. The provisions of the Federal Acquisition applicable to the implementation of this section may include definitions, exclusions, limitations, and qualifications.

"(f) REQUIRED REGULATIONS.—(1) The Federal Acquisition Regulation referred to in section 25(c)(1) of the Office of Federal Procurement Policy Act (41 U.S.C. 421(c)(1)) shall contain provisions on the allowability of contractor costs. Such provisions shall define in detail and in specific terms those costs which are unallowable, in whole or in part, under covered contracts. The regulations shall, at a minimum, clarify the cost principles applicable to contractor costs of the following:

"(A) Air shows.

"(B) Membership in civic, community, and professional organizations.

"(C) Recruitment.

"(D) Employee morale and welfare.

"(E) Actions to influence (directly or indirectly) executive branch action on regulatory and contract matters (other than costs incurred in regard to contract proposals pursuant to solicited or unsolicited bids).

"(F) Community relations.

"(G) Dining facilities.

"(H) Professional and consulting services, including legal services.

"(I) Compensation.

"(J) Selling and marketing.

"(K) Travel.

"(L) Public relations.

"(M) Hotel and meal expenses.

"(N) Expense of corporate aircraft.

"(O) Company-furnished automobiles.

"(P) Advertising.

"(2) The Federal Acquisition Regulation shall require that a contracting officer not resolve any questioned costs until the contracting officer has obtained—

"(A) adequate documentation with respect to such costs; and

"(B) the opinion of the executive agency's contract auditor on the allowability of such costs.

"(3) The Federal Acquisition Regulation shall provide that, to the maximum extent practicable, an executive agency's contract auditor be present at any negotiation or meeting with the contractor regarding a determination of the allowability of indirect costs of the contractor.

"(4) The Federal Acquisition Regulation shall require that all categories of costs designated in the report of an executive agency's contract auditor as questioned with respect to a proposal for settlement be resolved in such a manner that the amount of the individual questioned costs that are paid will be reflected in the settlement.

"(g) APPLICABILITY OF REQUIRED REGULATIONS TO SUBCONTRACTORS.—The regulations prescribed to carry out subsections (e) and (f)(1) shall require, to the maximum extent practicable, that such regulations apply to all subcontractors of a covered contract.

"(h) CONTRACTOR CERTIFICATION REQUIRED.—(1) A proposal for settlement of indirect costs applicable to a covered contract shall include a certification by an official of the contractor that, to the best of the certifying official's knowledge and belief, all indirect costs included in the proposal are allowable. Any such certification shall be in a form prescribed by the agency head concerned.

"(2) The agency head concerned may, in an exceptional case, waive the requirement for certification under paragraph (1) in the case of any contract if the agency head—

"(A) determines in such case that it would be in the interest of the United States to waive such certification; and

"(B) states in writing the reasons for that determination and makes such determination available to the public.

"(i) PENALTIES FOR SUBMISSION OF COST KNOWN AS NOT ALLOWABLE.—The submission to an executive agency of a proposal for settlement of costs for any period after such costs have been accrued that includes a cost that is expressly specified by statute or regulation as being unallowable, with the knowledge that such cost is unallowable, shall be subject to the provisions of section 287 of title 18, United States Code, and section 3729 of title 31, United States Code.

"(j) CONTRACTOR TO HAVE BURDEN OF PROOF.—In a proceeding before a board of contract appeals, the United States Court of Federal Claims, or any other Federal court in which the reasonableness of indirect costs for which a contractor seeks reimbursement from the United States is in issue, the burden of proof shall be upon the contractor to establish that those costs are reasonable.

"(k) PROCEEDING COSTS NOT ALLOWABLE.—(1) Except as otherwise provided in this subsection, costs incurred by a contractor in connection with any criminal, civil, or administrative proceeding commenced by the United States or a State are not allowable as reimbursable costs under a covered contract if the proceeding (A) relates to a violation of, or failure to comply with, a Federal or State statute or regulation, and (B) results in a disposition described in paragraph (2).

"(2) A disposition referred to in paragraph (1)(B) is any of the following:

"(A) In the case of a criminal proceeding, a conviction (including a conviction pursuant to a plea of nolo contendere) by reason of the violation or failure referred to in paragraph (1).

"(B) In the case of a civil or administrative proceeding involving an allegation of fraud or similar misconduct, a determination of contractor liability on the basis of the violation or failure referred to in paragraph (1).

"(C) In the case of any civil or administrative proceeding, the imposition of a monetary penalty by reason of the violation or failure referred to in paragraph (1).

"(D) A final decision—

"(i) to debar or suspend the contractor,

"(ii) to rescind or void the contract, or

"(iii) to terminate the contract for default,

by reason of the violation or failure referred to in paragraph (1).

"(E) A disposition of the proceeding by consent or compromise if such action could have resulted in a disposition described in subparagraph (A), (B), (C), or (D).

"(3) In the case of a proceeding referred to in paragraph (1) that is commenced by the United States and is resolved by consent or compromise pursuant to an agreement entered into by a contractor and the United States, the costs incurred by the contractor in connection with such proceeding that are otherwise not allowable as reimbursable costs under such paragraph may be allowed to the extent specifically provided in such agreement.

"(4) In the case of a proceeding referred to in paragraph (1) that is commenced by a State, the agency head that awarded the covered contract involved in the proceeding may allow the costs incurred by the contractor in connection with such proceeding as reimbursable costs if the agency head determines, under regulations prescribed by such agency head, that the costs were incurred as a result of (A) a specific term or condition of the contract, or (B) specific written instructions of the agency.

"(5)(A) Except as provided in subparagraph (C), costs incurred by a contractor in connection with a criminal, civil, or administrative proceeding commenced by the United States or a State in connection with a covered contract may be allowed as reimbursable costs under the contract if such costs are not disallowable under paragraph (1), but only to the extent provided in subparagraph (B).

"(B)(i) The amount of the costs allowable under subparagraph (A) in any case may not exceed the amount equal to 80 percent of the amount of the costs incurred, to the extent that such costs are determined to be otherwise allowable and allocable under the Federal Acquisition Regulations.

"(ii) Regulations issued for the purpose of clause (i) shall provide for appropriate consideration of the complexity of procurement litigation, generally accepted principles governing the award of legal fees in civil actions involving the United States as a party, and such other factors as may be appropriate.

"(C) In the case of a proceeding referred to in subparagraph (A), contractor costs otherwise allowable as reimbursable costs under this paragraph are not allowable if (i) such proceeding involves the same contractor misconduct alleged as the basis of another criminal, civil, or administrative proceeding, and (ii) the costs of such other proceeding are not allowable under paragraph (1).

"(6) In this subsection:

"(A) The term 'proceeding' includes an investigation.

"(B) The term 'costs', with respect to a proceeding—

"(i) means all costs incurred by a contractor, whether before or after the commencement of any such proceeding; and

"(ii) includes—

"(I) administrative and clerical expenses;

"(II) the cost of legal services, including legal services performed by an employee of the contractor;

"(III) the cost of the services of accountants and consultants retained by the contractor; and

"(IV) the pay of directors, officers, and employees of the contractor for time devoted by such directors, officers, and employees to such proceeding.

"(C) The term 'penalty' does not include restitution, reimbursement, or compensatory damages.

"(l) COVERED CONTRACT DEFINED.—(1) In this section, the term 'covered contract' means a contract for an amount in excess of $500,000 that is entered into by an executive agency, except that such term does not include a fixed-price contract without cost incentives.

"(2) Effective on October 1 of each year that is divisible by 5, the amount set forth in paragraph (1) shall be adjusted to the amount that is equal to the fiscal year 1994 constant dollar value of the amount set forth. An amount, as so adjusted, that is not evenly divisible by $50,000 shall be rounded to the nearest multiple of $50,000. In the case of an amount that is evenly divisible by $25,000 but is not evenly divisible by $50,000, the amount shall be rounded to the next higher multiple of $50,000.".

(b) CLERICAL AMENDMENT.—The table of contents in the first section of such Act is amended by striking out the item relating to section 306 and inserting in lieu thereof the following:

"Sec. 306. Allowable costs.".

PART III—ACQUISITIONS GENERALLY

SEC. 2191. TRAVEL EXPENSES OF GOVERNMENT CONTRACTORS.

Section 24 of the Office of Federal Procurement Policy Act (41 U.S.C. 420) is repealed.

Subtitle C—Audit and Access to Records

PART I—ARMED SERVICES ACQUISITIONS

SEC. 2201. CONSOLIDATION AND REVISION OF AUTHORITY TO EXAMINE RECORDS OF CONTRACTORS.

(a) AUTHORITY.—

(1) IN GENERAL.—Section 2313 of title 10, United States Code, is amended to read as follows:

"§2313. Examination of records of contractor

"(a) AGENCY AUTHORITY.—The head of an agency, acting through an authorized representative—

"(1) is entitled to inspect the plant and audit the records of—

"(A) a contractor performing a cost-reimbursement, incentive, time-and-materials, labor-hour, or price-redeterminable contract, or any combination of such contracts, made by that agency under this chapter; and

"(B) a subcontractor performing any cost-reimbursement, incentive, time-and-materials, labor-hour, or price-redeterminable subcontract under a contract referred to in subparagraph (A) or under any combination of such contracts; and

"(2) shall, for the purpose of evaluating the accuracy, completeness, and currency of cost or pricing data required to be submitted pursuant to section 2306a of this title with respect to a contract or subcontract, have the right to examine all records of the contractor or subcontractor related to—

"(A) the proposal for the contract or subcontract;

"(B) the discussions conducted on the proposal;

"(C) pricing of the contract or subcontract; or

"(D) performance of the contract or subcontract.

"(b) LIMITATION ON PREAWARD AUDITS RELATING TO INDIRECT COSTS.—The head of an agency may not perform a preaward audit to evaluate proposed indirect costs under any contract, subcontract, or modification to be entered into in accordance with this chapter in any case in which the contracting officer determines that the objectives of the audit can reasonably be met by accepting the results of an audit conducted by any other department or agency of the Federal Government within one year preceding the date of the contracting officer's determination.

"(c) SUBPOENA POWER.—(1) The Director of the Defense Contract Audit Agency (or any successor agency) may require by subpoena the production of records of a contractor, access to which is provided to the Secretary of Defense or Secretary of a military department by subsection (a).

"(2) Any such subpoena, in the case of contumacy or refusal to obey, shall be enforceable by order of an appropriate United States district court.

"(3) The authority provided by paragraph (1) may not be redelegated.

"(4) The Director (or any successor official) shall submit an annual report to the Secretary of Defense on the exercise of such authority during the preceding year and the reasons why such authority was exercised in any instance. The Secretary shall forward a copy of each such report to the Committees on Armed Services of the Senate and House of Representatives.

"(d) COMPTROLLER GENERAL AUTHORITY.—(1) Except as provided in paragraph (2), each contract awarded after using procedures other than sealed bid procedures shall provide that the Comptroller General and his representatives are entitled to examine any records of the contractor, or any of its subcontractors, that directly pertain to, and involve transactions relating to, the contract or subcontract.

"(2) Paragraph (1) does not apply to a contract or subcontract with a foreign contractor or foreign subcontractor if the head of the agency concerned determines, with the concurrence of the Comptroller General or his designee, that the application of that paragraph to the contract or subcontract would not be in the public interest. However, the concurrence of the Comptroller General or his designee is not required—

"(A) where the contractor or subcontractor is a foreign government or agency thereof or is precluded by the laws of the country involved from making its records available for examination; and

"(B) where the head of the agency determines, after taking into account the price and availability of the property and services from United States sources, that the public interest would be best served by not applying paragraph (1).

"(3) Paragraph (1) may not be construed to require a contractor or subcontractor to create or maintain any record that the contractor or subcontractor does not maintain in the ordinary course of business or pursuant to another provision of law.

"(e) LIMITATION.—The right of the head of an agency under subsection (a), and the right of the Comptroller General under subsection (d), with respect to a contract or subcontract shall expire three years after final payment under such contract or subcontract.

"(f) INAPPLICABILITY TO CERTAIN CONTRACTS.—This section is inapplicable with respect to the following contracts:

"(1) Contracts for utility services at rates not exceeding those established to apply uniformly to the public, plus any applicable reasonable connection charge.

"(g) RECORDS DEFINED.—In this section, the term 'records' includes books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or in any other form.".

(2) CLERICAL AMENDMENT.—The item relating to such section in the table of sections at the beginning of chapter 137 of title 10, United States Code, is amended to read as follows:

"2313. Examination of records of contractor.".

(b) REPEAL OF SUPERSEDED PROVISION.—

(1) REPEAL.—Section 2406 of title 10, United States Code, is repealed.

(2) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 141 of such title is amended by striking out the item relating to section 2406.

PART II—CIVILIAN AGENCY ACQUISITIONS

SEC. 2251. AUTHORITY TO EXAMINE RECORDS OF CONTRACTORS.

(a) AUTHORITY.—

(1) IN GENERAL.—Title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.), as amended by section 1251(a), is further amended by inserting after section 304A the following new section:

"EXAMINATION OF RECORDS OF CONTRACTOR

"SEC. 304B. (a) AGENCY AUTHORITY.—The head of an executive agency, acting through an authorized representative—

"(1) is entitled to inspect the plant and audit the records of—

"(A) a contractor performing a cost-reimbursement, incentive, time-and-materials, labor-hour, or price-redeterminable contract, or any combination of such contracts, made by that executive agency under this title; and

"(B) a subcontractor performing any cost-reimbursement, incentive, time-and-materials, labor-hour, or price-redeterminable subcontract under a contract referred to in subparagraph (A) or under any combination of such contracts; and

"(2) shall, for the purpose of evaluating the accuracy, completeness, and currency of cost or pricing data required to be submitted pursuant to section 304A with respect to a contract or subcontract, have the right to examine all records of the contractor or subcontractor related to—

"(A) the proposal for the contract or subcontract;

"(B) the discussions conducted on the proposal;

"(C) pricing of the contract or subcontract; or

"(D) performance of the contract or subcontract.

"(b) LIMITATION ON PREAWARD AUDITS RELATING TO INDIRECT COSTS.—The agency head may not perform a preaward audit to evaluate proposed indirect costs under any contract, subcontract, or modification to be entered into in accordance with this title in any case in which the contracting officer determines that the objectives of the audit can reasonably be met by accepting the results of an audit conducted by any other department or agency of the Federal Government within one year preceding the date of the contracting officer's determination.

"(c) SUBPOENA POWER.—(1) The agency head may require by subpoena the production of records of a contractor, access to which is provided by subsection (a).

"(2) Any such subpoena, in the case of contumacy or refusal to obey, shall be enforceable by order of an appropriate United States district court.

"(3) The authority provided by paragraph (1) may not be delegated.

"(4) In the year following a year in which the head of an executive agency exercises the authority provided in paragraph (1), the agency head shall submit to the Committee on Governmental Affairs of the Senate and the Committee on Government Operations of the House of Representatives a report on the exercise of such authority during such preceding year and the reasons why such authority was exercised in any instance.

"(d) COMPTROLLER GENERAL AUTHORITY.—(1) Except as provided in paragraph (2), each contract awarded after using procedures other than sealed bid procedures shall provide that the Comptroller General and his representatives are entitled to examine any records of the contractor, or any of its subcontractors, that directly pertain to, and involve transactions relating to, the contract or subcontract.

"(2) Paragraph (1) does not apply to a contract or subcontract with a foreign contractor or foreign subcontractor if the agency head concerned determines, with the concurrence of the Comptroller General or his designee, that the application of that paragraph to the contract or subcontract would not be in the public interest. However, the concurrence of the Comptroller General or his designee is not required.

"(3) Paragraph (1) may not be construed to require a contractor or subcontractor to create or maintain any record that the contractor or subcontractor does not maintain in the ordinary course of business or pursuant to another provision of law—

"(A) where the contractor or subcontractor is a foreign government or agency thereof or is precluded by the laws of the country involved from making its records available for examination; and

"(B) where the agency head determines, after taking into account the price and availability of the property and services from United States sources, that the public interest would be best served by not applying paragraph (1).

"(e) LIMITATION.—The right of an agency head under subsection (a), and the right of the Comptroller General under subsection (d), with respect to a contract or subcontract shall expire three years after final payment under such contract or subcontract.

"(f) INAPPLICABILITY TO CERTAIN CONTRACTS.—This section is inapplicable with respect to the following contracts:

"(1) CONTRACTS.—For utility services at rates not exceeding those established to apply uniformly to the public, plus any applicable reasonable connection charge.

"(g) RECORDS DEFINED.—In this section, the term 'records' includes books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or in any other form.".

(2) CLERICAL AMENDMENT.—The table of contents in the first section of such Act, as amended by section 1251(b), is further amended by inserting after the item relating to section 304A the following:

"Sec. 304B. Examination of records of contractor.".

(b) REPEAL OF SUPERSEDED PROVISION.—Section 304 of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 254) is amended by striking out subsection (c).

Subtitle D—Cost Accounting Standards

SEC. 2301. EXCEPTIONS TO COVERAGE.

Section 26(f)(2) of the Office of Federal Procurement Policy Act (41 U.S.C. 422(f)(2)) is amended—

(1) by inserting "(A)" after "(2)";

(2) by striking out ", other than contracts or subcontracts" and all that follows and inserting in lieu thereof a period; and

(3) by inserting at the end the following:

"(B) Subparagraph (A) does not apply to the following contracts or subcontracts:

"(i) Contracts or subcontracts where the price negotiated is based on established catalog or market prices of commercial items sold in substantial quantities to the general public.

"(ii) Contracts or subcontracts where the price negotiated is based on prices set by law or regulation.

"(iii) Any other firm fixed-price contract or subcontract for commercial items which is excepted from the requirement to provide cost or pricing data pursuant to subsection (b) or (d) of section 2306a of title 10, United States Code, or subsection (b) or (d) of section 304A of the Federal Property and Administrative Services Act of 1949.

"(C) In this paragraph, the term 'subcontract' includes a transfer of commercial items between divisions, subsidiaries, or affiliates of a contractor.".

SEC. 2302. REPEAL OF OBSOLETE DEADLINE REGARDING PROCEDURAL REGULATIONS FOR THE COST ACCOUNTING STANDARDS BOARD.

Section 26(f)(3) of the Office of Federal Procurement Policy Act (41 U.S.C. 422(f)(3)) is amended in the first sentence by striking out "Not later than 180 days after the date of the enactment of this section, the Administrator" and inserting in lieu thereof "The Administrator".

Subtitle E—Administration of Contract Provisions Relating to Price, Delivery, and Product Quality

PART I—ARMED SERVICES ACQUISITIONS

SEC. 2401. PROCUREMENT OF CRITICAL AIRCRAFT AND SHIP SPARE PARTS; QUALITY CONTROL.

(a) REPEAL.—Section 2383 of title 10, United States Code, is repealed.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 141 of such title is amended by striking out the item relating to section 2383.

SEC. 2402. CONTRACTOR GUARANTEES REGARDING WEAPON SYSTEMS.

Section 2403(h) of title 10, United States Code, is amended—

(1) by redesignating paragraph (2) as paragraph (3); and

(2) by inserting after paragraph (1) the following new paragraph (2):

"(2) The regulations shall include the following:

"(A) Guidelines for negotiating contractor guarantees that are reasonable and cost effective, as determined on the basis of the likelihood of defects and the estimated cost of correcting such defects.

"(B) Procedures for administering contractor guarantees.

"(C) Guidelines for determining the cases in which it may be appropriate to waive the requirements of this section.".

PART II—ACQUISITIONS GENERALLY

SEC. 2451. SECTION 3737 OF THE REVISED STATUTES: EXPANSION OF AUTHORITY TO PROHIBIT SETOFFS AGAINST ASSIGNEES; REORGANIZATION OF SECTION; REVISION OF OBSOLETE PROVISIONS.

Section 3737 of the Revised Statutes (41 U.S.C. 15) is amended to read as follows:

"SEC. 3737. (a) No contract or order, or any interest therein, shall be transferred by the party to whom such contract or order is given to any other party, and any such transfer shall cause the annulment of the contract or order transferred, so far as the United States is concerned. All rights of action, however, for any breach of such contract by the contracting parties, are reserved to the United States.

"(b) The provisions of subsection (a) shall not apply in any case in which the moneys due or to become due from the United States or from any agency or department thereof, under a contract providing for payments aggregating $1,000 or more, are assigned to a bank, trust company, or other financing institution, including any Federal lending agency, provided:

"(1) That, in the case of any contract entered into after October 9, 1940, no claim shall be assigned if it arises under a contract which forbids such assignment.

"(2) That, unless otherwise expressly permitted by such contract, any such assignment shall cover all amounts payable under such contract and not already paid, shall not be made to more than one party, and shall not be subject to further assignment, except that any such assignment may be made to one party as agent or trustee for two or more parties participating in such financing.

"(3) That, in the event of any such assignment, the assignee thereof shall file written notice of the assignment together with a true copy of the instrument of the assignment with—

"(A) the contracting officer or the head of his department or agency;

"(B) the surety or sureties upon the bond or bonds, if any, in connection with such contract; and

"(C) the disbursing officer, if any, designated in such contract to make payment.

"(c) Notwithstanding any law to the contrary governing the validity of assignments, any assignment pursuant to this section shall constitute a valid assignment for all purposes.

"(d) In any case in which moneys due or to become due under any contract are or have been assigned pursuant to this section, no liability of any nature of the assignor to the United States or any department or agency thereof, whether arising from or independently of such contract, shall create or impose any liability on the part of the assignee to make restitution, refund, or repayment to the United States of any amount heretofore since July 1, 1950, or hereafter received under the assignment.

"(e) Any contract of the Department of Defense, the General Services Administration, the Department of Energy, or any other department or agency of the United States designated by the President, except any such contract under which full payment has been made, may, upon a determination of need by the President, provide or be amended without consideration to provide that payments to be made to the assignee of any moneys due or to become due under such contract shall not be subject to reduction or setoff. Each such determination of need shall be published in the Federal Register.

"(f) If a provision described in subsection (e) or a provision to the same general effect has been at any time heretofore or is hereafter included or inserted in any such contract, payments to be made thereafter to an assignee of any moneys due or to become due under such contract shall not be subject to reduction or setoff for any liability of any nature of the assignor to the United States or any department or agency thereof which arises independently of such contract, or hereafter for any liability of the assignor on account of—

"(1) renegotiation under any renegotiation statute or under any statutory renegotiation article in the contract;

"(2) fines;

"(3) penalties (which term does not include amounts which may be collected or withheld from the assignor in accordance with or for failure to comply with the terms of the contract); or

"(4) taxes, social security contributions, or the withholding or non withholding of taxes or social security contributions, whether arising from or independently of such contract.

"(g) Except as herein otherwise provided, nothing in this section shall be deemed to affect or impair rights of obligations heretofore accrued.".

SEC. 2452. REPEAL OF REQUIREMENT FOR DEPOSIT OF CONTRACTS WITH GAO.

Section 3743 of the Revised Statutes (41 U.S.C. 20) is repealed.

Subtitle F—Claims and Disputes

PART I—ARMED SERVICES ACQUISITIONS

SEC. 2501. CERTIFICATION OF CONTRACT CLAIMS.

(a) DOD CERTIFICATION REQUIREMENT IN CONFLICT WITH GOVERNMENTWIDE REQUIREMENT.—

(1) INAPPLICABILITY OF REQUIREMENT TO CONTRACT CLAIMS.—Section 2410 of title 10, United States Code, is amended to read as follows:

"§2410. Requests for equitable adjustment or other relief: certification

"(a) CERTIFICATION REQUIREMENT.—A request for equitable adjustment to contract terms or request for relief under Public Law 85–804 (50 U.S.C. 1431 et seq.) that exceeds the simplified acquisition threshold may not be paid unless a person authorized to certify the request on behalf of the contractor certifies, at the time the request is submitted, that—

"(1) the request is made in good faith, and

"(2) the supporting data are accurate and complete to the best of that person's knowledge and belief.".

(2) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 141 of such title is amended by striking out the item relating to section 2410 and inserting in lieu thereof the following:

"2410. Requests for equitable adjustment or other relief: certification.".

(b) RESTRICTION ON LEGISLATIVE PAYMENT OF CLAIMS.—Section 2410 of title 10, United States Code, as amended by subsection (a), is further amended by adding at the end the following new subsection:

"(b) RESTRICTION ON LEGISLATIVE PAYMENT OF CLAIMS.—In the case of a contract of an agency named in section 2303(a) of this title, no provision of a law enacted after September 30, 1994, that directs the payment of a particular claim under such contract, a particular request for equitable adjustment to any term of such contract, or a particular request for relief under Public Law 85-804 (50 U.S.C. 1431 et seq.) regarding such contract may be implemented unless such provision of law—

"(1) specifically refers to this subsection; and

"(2) specifically states that this subsection does not apply with respect to the payment directed by that provision of law.".

(c) DEFINITION.—Section 2410, as amended by subsections (a) and (b), is further amended by adding at the end the following:

"(c) DEFINITION.—In this section, the term 'simplified acquisition threshold' has the meaning given that term in section 2302(4) of this title.".

(d) REPEAL OF RELATED PROVISIONS.—

(1) CERTIFICATION REGULATIONS FOR CONTRACT CLAIMS EXCEEDING $100,000.—

(A) REPEAL.—Section 2410e of title 10, United States Code, is repealed.

(B) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 141 of such title is amended by striking out the item relating to section 2410e.

(2) CONFORMING REPEAL.—Section 813(b) of the National Defense Authorization Act for Fiscal Year 1993 (Public Law 102-484, 106 Stat. 2453), is repealed.

SEC. 2502. SHIPBUILDING CLAIMS.

(a) LIMITATION ON PERIOD FOR SUBMISSION.—

(1) INCREASED PERIOD.—Subsection (a) of section 2405 of title 10, United States Code, is amended—

(A) by striking out "after December 7, 1983," and inserting in lieu thereof "on or after the date of the enactment of the Federal Acquisition Streamlining Act of 1994"; and

(B) by striking out "18 months" and inserting in lieu thereof "6 years".

(2) SAVINGS PROVISION.—Notwithstanding the 6-year period provided in subsection (a) of section 2405 of title 10, United States Code, as amended by paragraph (1), the period applicable under such subsection in the case of a shipbuilding contract entered into after December 7, 1983, and before the date of the enactment of the Federal Acquisition Streamlining Act of 1994 shall continue to be 18 months.

(b) RESUBMISSION WITH CORRECTED CERTIFICATION.—Subsection (c) of such section is repealed.

PART II—ACQUISITIONS GENERALLY

SEC. 2551. CLAIMS JURISDICTION OF UNITED STATES DISTRICT COURTS AND THE UNITED STATES COURT OF FEDERAL CLAIMS.

(a) CONCURRENT JURISDICTION OF UNITED STATES DISTRICT COURTS UNDER THE LITTLE TUCKER ACT.—Subsection (a) of section 1346 of title 28, United States Code, is amended to read as follows:

"(a)(1) The district courts shall have original jurisdiction, concurrent with the United States Court of Federal Claims, of any civil action against the United States for the recovery of any internal-revenue tax alleged to have been erroneously or illegally assessed or collected, or any penalty claimed to have been collected without authority or any sum alleged to have been excessive or in any manner wrongfully collected under the internal-revenue laws.

"(2)(A) Except as provided in subparagraph (B), the district courts shall have original jurisdiction, concurrent with the United States Court of Federal Claims, of any other civil action or claim against the United States, not exceeding $10,000 in amount, founded either upon the Constitution, or any Act of Congress, or any regulation of an executive department, or upon any express or implied contract with the United States, or for liquidated or unliquidated damages in cases not sounding in tort.

"(B) The district courts shall not have jurisdiction over any civil action or claim against the United States or any Federal entity which relates in any manner to a contract to which the Contract Disputes Act of 1978 (41 U.S.C. 601 et seq.) applies, including a claim that seeks to establish the existence or nonexistence of such a contract, seeks to establish that such a contract is void, or seeks to determine and construe the terms of such a contract. The district courts do not have jurisdiction over any civil action or claim described in the preceding sentence pursuant to section 1331, 1334, or 1346(a)(2)(B) of this title, any provision of law giving a Federal entity the right to sue or be sued in its own name, or any other provision of law.".

(b) JURISDICTION OF THE UNITED STATES COURT OF FEDERAL CLAIMS UNDER THE TUCKER ACT.—Section 1491 of title 28, United States Code, as amended by section 1422, is further amended by inserting after subsection (c) the following:

"(d)(1) The United States Court of Federal Claims shall have jurisdiction over any civil action or claim against the United States which relates in any manner to a contract to which the Contract Disputes Act of 1978 (41 U.S.C. 601 et seq.) applies, including a civil action or claim that seeks to establish the existence or nonexistence of such a contract, seeks to establish that such contract is void, or seeks to determine and construe the terms of any such contract.

"(2) The jurisdiction of the United States Court of Federal Claims is, pursuant to section 1346(a)(2)(B) of this title, exclusive as to the district courts of the United States.".

SEC. 2552. CONTRACT DISPUTES ACT IMPROVEMENTS.

(a) PERIOD FOR FILING CLAIMS.—

(1) SIX-YEAR LIMITATION.—Section 6 of the Contract Disputes Act of 1978 (41 U.S.C. 605) is amended in subsection (a) by inserting after the second sentence the following: "Each claim by a contractor against the government relating to a contract and each claim by the government against a contractor relating to a contract shall be submitted within 6 years after the occurrence of the event or events giving rise to the claim. The preceding sentence does not apply to a claim by the government against a contractor that is based on a claim by the contractor involving fraud.".

(2) LIMITATION ON APPLICABILITY TO EXISTING CONTRACTS.—Notwithstanding the third sentence of section 6(a) of the Contract Disputes Act of 1978, as added by paragraph (1), if a contract in existence on the date of the enactment of this Act requires that a claim referred to in that sentence be submitted earlier than 6 years after the occurrence of the event or events giving rise to the claim, then the claim shall be submitted within the period required by the contract. The preceding sentence does not apply to a claim by the Federal Government against a contractor that is based on a claim by the contractor involving fraud.

(b) INCREASED THRESHOLD FOR CERTIFICATION, DECISION, AND NOTIFICATION REQUIREMENTS.—Subsection (c) of such section is amended by striking out "$50,000" each place it appears and inserting in lieu thereof "$100,000".

(c) INCREASED MAXIMUM FOR APPLICABILITY OF ACCELERATED PROCEDURES.—Section 8(f) of the Contract Disputes Act of 1978 (41 U.S.C. 607(f)) is amended by striking out "$50,000" in the first sentence and inserting in lieu thereof "$150,000".

(d) INCREASED MAXIMUM FOR APPLICABILITY OF SMALL CLAIMS PROCEDURE.—Section 9(a) of the Contract Disputes Act of 1978 (41 U.S.C. 608(a)) is amended by striking out "$10,000" in the first sentence and inserting in lieu thereof "$50,000".

(e) REDUCED PERIOD FOR FILING ACTION IN COURT OF FEDERAL CLAIMS.—Section 10(a)(3) of such Act (41 U.S.C. 609(a)(3)) is amended by striking out "twelve months" and inserting in lieu thereof "90 days".

SEC. 2553. EXTENSION OF ALTERNATIVE DISPUTE RESOLUTION AUTHORITY.

Section 6(e) of the Contracts Disputes Act of 1978 (41 U.S.C. 605(e)) is amended by striking out "October 1, 1995" and inserting in lieu thereof "October 1, 1999".

SEC. 2554. EXPEDITED RESOLUTION OF CONTRACT ADMINISTRATION COMPLAINTS.

(a) REGULATIONS REQUIRED.—The Federal Acquisition Regulation shall include provisions that require a contracting officer—

(1) to make every reasonable effort to respond in writing within 30 days to any written request for a contracting officer's decision with respect to a matter relating to the administration of a contract that is received from a small business concern; and

(2) in the event that the contracting officer is unable to render a decision within the 30-day period, to transmit to the contractor within such period a written notification of a specific date by which the contracting officer expects to reach a decision.

(b) RULE OF CONSTRUCTION.—Nothing in this provision shall be considered as creating any rights under the Contract Disputes Act (41 U.S.C. 601 et seq.).

(c) DEFINITION.—In this section, the term "small business concern" means a business concern that meets the requirements of section 3(a) of the Small Business Act (15 U.S.C. 632(a)) and the regulations promulgated pursuant to that section.

TITLE III—SERVICE SPECIFIC AND MAJOR SYSTEMS STATUTES

Subtitle A—Major Systems Statutes

SEC. 3001. REQUIREMENT FOR INDEPENDENT COST ESTIMATES AND MANPOWER ESTIMATES BEFORE DEVELOPMENT OR PRODUCTION.

(a) CONTENT AND SUBMISSION OF ESTIMATES.—Section 2434 of title 10, United States Code, is amended by striking out subsection (b) and inserting in lieu thereof the following:

"(b) REGULATIONS.—The Secretary of Defense shall prescribe regulations governing the content and submission of the estimates required by subsection (a). The regulations shall require—

"(1) that the independent estimate of the cost of a program—

"(A) be prepared by an office or other entity that is not under the supervision, direction, or control of the military department, Defense Agency, or other component of the Department of Defense that is directly responsible for carrying out the development or acquisition of the program; and

"(B) include all costs of development, procurement, and operations and support, without regard to funding source or management control; and

"(2) that the manpower estimate include the total personnel required to train for, operate, maintain, and support the program upon full operational deployment.".

(b) TERMINOLOGY CORRECTION.—Subsection (a) of such section is amended by striking out "full-scale engineering development" and inserting in lieu thereof "engineering and manufacturing development".

SEC. 3002. ENHANCED PROGRAM STABILITY.

(a) BASELINE DESCRIPTIONS AND DEVIATION REPORTING.—Section 2435 of title 10, United States Code, is amended—

(1) in subsection (a)—

(A) by striking out paragraph (2); and

(B) in paragraph (1)—

(i) by striking out "(1)"; and

(ii) by redesignating subparagraphs (A) and (B) as paragraphs (1) and (2), respectively; and

(2) by striking out subsection (b) and inserting in lieu thereof the following:

"(b) REGULATIONS.—The Secretary of Defense shall prescribe regulations governing—

"(1) the content of baseline descriptions, which shall include the program cost, the program schedule, and a program performance description;

"(2) the submission of reports on deviations of a program from the baseline description by the program manager to the Secretary of the military department concerned and the Under Secretary of Defense for Acquisition and Technology;

"(3) procedures for review of deviation reports within the Department of Defense; and

"(4) procedures for submission and approval of revised baseline descriptions.

"(c) BASELINE DESCRIPTION REQUIRED BEFORE OBLIGATION OF FUNDS.—(1) Except as provided in paragraph (2), no amount appropriated or otherwise made available to the Department of Defense may be obligated for a major defense acquisition program before a baseline description for the program is approved in accordance with the procedures prescribed pursuant to subsection (b)(4).

"(2) An obligation otherwise prohibited by paragraph (1) may be incurred if approved in advance by the Under Secretary of Defense for Acquisition and Technology.".

(b) TERMINOLOGY CORRECTION.—Subsection (a)(1) of such section, as redesignated by subsection (a)(1)(B)(ii), is amended by striking out "full-scale engineering development" and inserting in lieu thereof "engineering and manufacturing development".

SEC. 3003. REPEAL OF REQUIREMENT TO DESIGNATE CERTAIN MAJOR DEFENSE ACQUISITION PROGRAMS AS DEFENSE ENTERPRISE PROGRAMS.

Section 809 of the National Defense Authorization Act for Fiscal Year 1991 (Public Law 101-510; 10 U.S.C. 2430 note) is amended—

(1) by striking out subsection (d); and

(2) by redesignating subsections (e), (f), (g), and (h) as subsections (d), (e), (f), and (g), respectively.

SEC. 3004. REPEAL OF REQUIREMENT FOR COMPETITIVE PROTOTYPING IN MAJOR PROGRAMS.

(a) REPEAL.—Section 2438 of title 10, United States Code, is repealed.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 144 of such title is amended by striking out the item relating to section 2438.

SEC. 3005. REPEAL OF REQUIREMENT FOR COMPETITIVE ALTERNATIVE SOURCES IN MAJOR PROGRAMS.

(a) REPEAL.—Section 2439 of title 10, United States Code, is repealed.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 144 of such title is amended by striking out the item relating to section 2439.

Subtitle B—Testing Statutes

SEC. 3011. DIRECTOR OF OPERATIONAL TEST AND EVALUATION TO REPORT DIRECTLY TO SECRETARY OF DEFENSE.

Section 139(c) of title 10, United States Code, is amended by inserting after "(c)" the following: "The Director reports directly, without intervening review or approval, to the Secretary of Defense and Deputy Secretary of Defense personally.".

SEC. 3012. RESPONSIBILITY OF DIRECTOR OF OPERATIONAL TEST AND EVALUATION FOR LIVE FIRE TESTING.

(a) CONDUCT OF LIVE FIRE TESTING.—Subsection (b) of section 139 of title 10, United States Code, is amended—

(1) by striking out "and" at the end of paragraph (4);

(2) by striking out the period at the end of paragraph (5) and inserting in lieu thereof "; and"; and

(3) by adding at the end the following new paragraph:

"(6) conduct the live fire testing activities of the Department of Defense provided for under section 2366 of this title.".

(b) ANNUAL REPORT ON LIVE FIRE TESTING.—Subsection (f) of such section is amended by inserting "(including live fire testing activities)" in the first sentence after "operational test and evaluation activities".

SEC. 3013. REQUIREMENT FOR UNCLASSIFIED VERSION OF ANNUAL REPORT ON OPERATIONAL TEST AND EVALUATION.

Section 139(f) of title 10, United States Code, is amended by inserting after the second sentence the following new sentence: "If the Director submits the report to Congress in a classified form, the Director shall concurrently submit an unclassified version of the report to Congress.".

Subtitle C—Service Specific Laws

SEC. 3021. GRATUITOUS SERVICES OF OFFICERS OF CERTAIN RESERVE COMPONENTS.

Section 279 of title 10, United States Code, is amended—

(1) by striking out "Notwithstanding" and inserting in lieu thereof "(a) ACCEPTANCE BY SECRETARY OF A MILITARY DEPARTMENT.—Notwithstanding"; and

(2) by adding at the end the following new subsection:

"(b) ACCEPTANCE BY SECRETARY OF DEFENSE.—Notwithstanding section 1342 of title 31, the Secretary of Defense may accept the gratuitous services of an officer of a reserve component (other than an officer of the Army National Guard of the United States or the Air National Guard of the United States) in consultation upon matters relating to the armed forces.".

SEC. 3022. AUTHORITY TO RENT SAMPLES, DRAWINGS, AND OTHER INFORMATION TO OTHERS.

Subchapter V of chapter 148 of title 10, United States Code, is amended in section 2541(a) by inserting "rent," after "sell," each place it appears in paragraphs (1) and (2).

SEC. 3023. CIVIL RESERVE AIR FLEET.

(a) DEFINITIONS.—Section 9511 of title 10, United States Code, is amended—

(1) in paragraph (1)—

(A) by inserting "'civil aircraft'," after "'person',";

(B) by striking out "meaning" and inserting in lieu thereof "meanings"; and

(C) by striking out "(49 U.S.C. 1301)" and inserting in lieu thereof "(49 U.S.C. App. 1301)";

(2) in paragraph (2), by striking out "passenger-cargo" and inserting in lieu thereof "passenger cargo";

(3) in paragraph (3), by striking out "cargo-capable" and inserting in lieu thereof "cargo capable";

(4) by striking out paragraph (5) and inserting in lieu thereof the following:

"(5) The term 'cargo convertible aircraft' means a passenger aircraft equipped or designed so that all or substantially all of the main deck of the aircraft can be readily converted for the carriage of property or mail.";

(5) by striking out paragraph (6);

(6) by redesignating paragraph (7) as paragraph (6);

(7) by redesignating paragraph (8) as paragraph (7) and—

(A) in subparagraph (A) of such paragraph, by inserting "under section 9512 of this title" after "and who contracts with the Secretary";

(B) by striking out "or" at the end of such subparagraph (A); and

(C) by inserting before the period at the end of such paragraph the following: ", or (C) who owns or controls existing aircraft, or will own or control new aircraft, and who contractually commits all or some of such aircraft to the Civil Reserve Air Fleet";

(8) by redesignating paragraphs (9), (10), (11), and (12) as paragraphs (8), (9), (10), and (11), respectively; and

(9) in paragraph (11), as so redesignated—

(A) by striking out "interoperability" and inserting in lieu thereof "compatibility"; and

(B) by striking out "a cargo-convertible, cargo-capable, or passenger-cargo combined aircraft" and inserting in lieu thereof "an aeromedical aircraft or a cargo convertible, cargo capable, or passenger cargo combined aircraft".

(b) CONSOLIDATION OF PROVISIONS RELATING TO CONTRACTUAL COMMITMENT OF AIRCRAFT.—Chapter 931 of such title is amended—

(1) by redesignating subsections (b) and (c) of section 9512 as subsections (c) and (d), respectively;

(2) by redesignating subsection (a) of section 9513 as subsection (b), transferring such subsection (as so redesignated) to section 9512, and inserting such subsection after subsection (a);

(3) by redesignating subsection (b) of section 9513 as subsection (e) and transferring such subsection (as so redesignated) to the end of section 9512;

(4) in subsection (c) of section 9512, as redesignated by paragraph (1), by striking out "the terms required by section 9513 of this title and";

(5) in subsection (e) of section 9512, as redesignated and transferred to such section by paragraph (3), by striking out "under section 9512 of this title" and inserting in lieu thereof "entered into under this section"; and

(6) by striking out the heading of section 9513.

(c) USE OF MILITARY INSTALLATIONS BY CONTRACTORS.—

(1) AUTHORITY.—Such chapter, as amended by subsection (b), is further amended by adding at the end the following new section 9513:

"§9513. Use of military installations by Civil Reserve Air Fleet contractors

"(a) CONTRACT AUTHORITY.—(1) The Secretary of the Air Force—

"(A) may, by contract entered into with any contractor, authorize such contractor to use one or more Air Force installations designated by the Secretary; and

"(B) with the consent of the Secretary of another military department, may, by contract entered into with any contractor, authorize the contractor to use one or more installations, designated by the Secretary of the Air Force, that is under the jurisdiction of the Secretary of such other military department.

"(2) The Secretary of the Air Force may include in the contract such terms and conditions as the Secretary determines appropriate to promote the national defense or to protect the interests of the United States.

"(b) PURPOSES OF USE.—A contract entered into under subsection (a) may authorize use of

a designated installation as a weather alternate, a service stop not involving the enplaning or deplaning of passengers or cargo, or, in the case of an installation within the United States, for other commercial purposes. Notwithstanding any other provision of the law, the Secretary may establish different levels and types of uses for different installations for commercial operations not required by the Department of Defense and may provide in contracts under subsection (a) for different levels and types of uses by different contractors.

"(c) DISPOSITION OF PAYMENTS FOR USE.—Notwithstanding any other provision of law, amounts collected from the contractor for landing fees, services, supplies, or other charges authorized to be collected under the contract shall be credited to the appropriations of the armed forces having jurisdiction over the military installation to which the contract pertains. Amounts so credited to an appropriation shall be available for obligation for the same period as the appropriation to which credited.

"(d) HOLD HARMLESS REQUIREMENT.—A contract entered into under subsection (a) shall provide that the contractor agrees to indemnify and hold harmless the United States from all actions, suits, or claims of any sort resulting from, relating to, or arising out of any activities conducted, or services or supplies furnished, in connection with the contract.

"(e) RESERVATION OF RIGHT TO EXCLUDE CONTRACTOR.—A contract entered into under subsection (a) shall provide that the Secretary or, in the case of an installation under the jurisdiction of an armed force other than the Air Force, the Secretary concerned may at any time and without prior notice deny access to an installation designated under the contract if military exigencies require such action.".

(2) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by striking out the item relating to section 9513 and inserting in lieu thereof the following:

"9513. Use of military installations by Civil Reserve Air Fleet contractors.".

SEC. 3024. EXCHANGE OF PERSONNEL.

(a) EXCHANGE AUTHORITY.—Subchapter II of chapter 138 of title 10, United States Code, is amended by adding at the end the following new section:

"§2350k. Exchange of personnel

"(a) INTERNATIONAL EXCHANGE AGREEMENTS AUTHORIZED.—Under regulations prescribed by the Secretary of Defense, the Secretary and the secretaries of the military departments are each authorized to enter into agreements with the governments of foreign countries for the exchange of military and civilian personnel of the Department of Defense and military and civilian personnel of the defense departments or ministries of such foreign governments.

"(b) ASSIGNMENT OF PERSONNEL.—Pursuant to such agreements, personnel of the foreign defense departments or ministries may be assigned to positions in the Department of Defense, and personnel of the Department of Defense may be assigned to positions in foreign defense departments or ministries. Agreements for the exchange of personnel engaged in research and development activities may provide for assignments to positions in private industry that support the defense departments or ministries. The specific positions and the individuals to be assigned must be acceptable to both the sending government and the host government.

"(c) RECIPROCITY OF PERSONNEL QUALIFICATIONS REQUIRED.—Each government shall be required under an agreement authorized by subsection (a) to provide personnel having qualifications, training, and skills that are essentially equal to those of the personnel provided by the other government.

"(d) PAYMENT OF PERSONNEL COSTS.—Each government shall pay the salary, per diem, cost of living, travel, cost of language or other training, and other costs (except for cost of temporary duty directed by the host government and costs incident to the use of host government facilities in the performance of assigned duties) for its own personnel in accordance with the laws and regulations of such government that pertain to such matters.".

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of subchapter II of such chapter is amended by adding at the end the following new item:

"2350k. Exchange of personnel.".

SEC. 3025. SCIENTIFIC INVESTIGATION AND RESEARCH FOR THE NAVY.

(a) REPEAL.—Section 7203 of title 10, United States Code, is repealed.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 631 of such title is amended by striking out the item relating to section 7203.

SEC. 3026. CONSTRUCTION OF COMBATANT AND ESCORT VESSELS AND ASSIGNMENT OF VESSEL PROJECTS.

(a) REPEAL OF OBSOLETE AND INTERNALLY INCONSISTENT PROVISIONS.—Section 7299a of title 10, United States Code, is amended—

(1) by striking out subsection (a); and

(2) by redesignating subsections (b) and (c) as subsections (a) and (b), respectively.

(b) CONFORMING AMENDMENT.—Subsection (b) of such section, as redesignated by subsection (a)(2), is amended in paragraph (2) by striking out "subsection (a) or".

SEC. 3027. REPEAL OF REQUIREMENT FOR CONSTRUCTION OF VESSELS ON PACIFIC COAST.

(a) REPEAL.—Section 7302 of title 10, United States Code, is repealed.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 633 of such title is amended by striking out the item relating to section 7302.

SEC. 3028. AUTHORITY TO TRANSFER BY GIFT A VESSEL STRICKEN FROM NAVAL VESSEL REGISTER.

Section 7306(a)(1) of title 10, United States Code, is amended by inserting "Territory," after "State,".

SEC. 3029. NAVAL SALVAGE FACILITIES.

Chapter 637 of title 10, United States Code, is amended—

(1) in section 7361—

(A) in subsection (a), by inserting "AUTHORITY TO PROVIDE FACILITIES BY CONTRACT OR OTHERWISE.—" after "(a)";

(B) in subsection (b), by inserting "CONTRACTS AFFECTING THE DEPARTMENT OF TRANSPORTATION.—" after "(b)"; and

(C) by striking out subsection (c) and inserting in lieu thereof the following new subsection (c):

"(c) LIMITATION ON TERM CONTRACTS.—Term contracts may be entered into for purposes of this section only after—

"(1) it has been demonstrated to the satisfaction of the Secretary of the Navy that available commercial salvage facilities are inadequate to meet national defense requirements; and

"(2) the Secretary of the Navy determines that adequate public notice of intent to exercise the authority under this subsection has been provided.";

(2) by designating the text of section 7362 as subsection (d) and transferring such text, as so designated, to the end of section 7361 of title 10, United States Code;

(3) in subsection (d) of section 7361 of such title, as so designated and transferred, by inserting before "The Secretary" the following: "COMMERCIAL USE OF NAVAL VESSELS AND EQUIPMENT.—";

(4) by designating the text of section 7363 as subsection (e) and transferring such text, as so designated, to the end of section 7361 of title 10, United States Code;

(5) in subsection (e) of section 7361 of such title, as so designated and transferred, by inserting before "Before any salvage vessel" the following: "CONDITIONS FOR TRANSFER OF EQUIPMENT.—";

(6) by designating the text of section 7365 as subsection (f) and transferring such text, as so designated, to the end of section 7361 of title 10, United States Code;

(7) in subsection (f) of section 7361 of such title, as so designated and transferred, by inserting before "The Secretary" the following: "SETTLEMENT OF CLAIMS.—";

(8) by designating the text of section 7367 as subsection (g) and transferring such text, as so designated, to the end of section 7361 of title 10, United States Code;

(9) in subsection (g) of section 7361 of such title, as so designated and transferred—

(A) by inserting before "Money received" the following: "DISPOSITION OF RECEIPTS.—"; and

(B) by striking out "this chapter" in the first sentence and inserting in lieu thereof "this section";

(10) by striking out the section headings for sections 7362, 7363, 7365, and 7367;

(11) by striking out the heading for section 7361 and inserting in lieu thereof the following:

"§7361. Navy support for salvage operations";

and

(12) in the table of sections at the beginning of such chapter—

(A) by striking out the item relating to section 7361 and inserting in lieu thereof the following:

"7361. Navy support for salvage operations.";

and

(B) by striking out the items relating to sections 7362, 7363, 7365, and 7367.

Subtitle D—Department of Defense Commercial and Industrial Activities

SEC. 3051. FACTORIES AND ARSENALS: MANUFACTURE AT.

(a) CONSOLIDATION AND REVISION OF AUTHORITY.—

(1) AUTHORITY.—Subchapter V of chapter 148 of title 10, United States Code is amended by adding at the end the following:

"§2542. Factories and arsenals: manufacture at

"(a) The Secretary of Defense or the Secretary of a military department may have supplies needed for the Department of Defense or such military department, as the case may be, made in factories or arsenals owned by the United States.

"(b) The Secretary of Defense or the Secretary of the military department concerned may abolish any United States arsenal that such Secretary considers unnecessary.".

(2) TECHNICAL AMENDMENT.—The table of sections at the beginning of subchapter V of such chapter is amended by adding at the end the following new item:

"2542. Factories and arsenals: manufacture at.".

(b) REPEAL OF SUPERSEDED AUTHORITY.—

(1) ARMY AUTHORITY.—

(A) REPEAL.—Section 4532 of title 10, United States Code, is repealed.

(B) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 433 of such title is amended by striking out the item relating to section 4532.

(2) AIR FORCE AUTHORITY.—

(A) REPEAL.—Section 9532 of title 10, United States Code, is repealed.

(B) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 933 of such

title is amended by striking out the item relating to section 9532.

SEC. 3052. ACCOUNTING REQUIREMENT FOR CONTRACTED ADVISORY AND ASSISTANCE SERVICES.

(a) FUNDING TO BE IDENTIFIED IN BUDGET.—Section 1105 of title 31, United States Code, is amended by adding at the end the following new subsection:

"(g)(1) The Director of the Office of Management and Budget shall establish the funding for advisory and assistance services for each department and agency as a separate object class in each budget annually submitted to the Congress under this section.

"(2)(A) In paragraph (1), except as provided in subparagraph (B), the term 'advisory and assistance services' means the following services when provided by nongovernmental sources:

"(i) Management and professional support services.

"(ii) Studies, analyses, and evaluations.

"(iii) Engineering and technical services.

"(B) In paragraph (1), the term 'advisory and assistance services' does not include the following services:

"(i) Routine automated data processing and telecommunications services (as defined in the Federal Information Resources Management Regulation prescribed by the Administrator of General Services) unless such services are an integral part of a contract for the procurement of advisory and assistance services.

"(ii) Architectural and engineering services.

"(iii) Technical support of research and development activities.

"(iv) Research on basic mathematics or medical, biological, physical, social, psychological, or other phenomena.".

(b) REPEAL OF SOURCE LAW.—Section 512 of Public Law 102-394 (106 Stat. 1826) is repealed.

(c) REPEAL OF SUPERSEDED PROVISIONS.—

(1) TITLE 10.—

(A) REPEAL.—Section 2212 of title 10, United States Code, is repealed.

(B) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 131 of such title is amended by striking out the item relating to section 2212.

(2) TITLE 31.—

(A) REPEAL.—Section 1114 of title 31, United States Code, is repealed.

(B) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 11 of such title is amended by striking out the item relating to section 1114.

Subtitle E—Fuel- and Energy-Related Laws

SEC. 3061. LIQUID FUELS AND NATURAL GAS: CONTRACTS FOR STORAGE, HANDLING, OR DISTRIBUTION.

Section 2388(a) of title 10, United States Code, is amended by striking out "liquid fuels and natural gas" and inserting in lieu thereof "liquid fuels or natural gas".

Subtitle F—Fiscal Statutes

SEC. 3071. DISBURSEMENT OF FUNDS OF MILITARY DEPARTMENT TO COVER OBLIGATIONS OF ANOTHER AGENCY OF DEPARTMENT OF DEFENSE.

Subsection (c)(2) of section 3321 of title 31, United States Code, is amended by striking out "military departments of the" and inserting in lieu thereof "The".

Subtitle G—Miscellaneous

SEC. 3081. OBLIGATION OF FUNDS: LIMITATION.

Section 2202 of title 10, United States Code, is amended to read as follows:

"§2202. Obligation of funds: limitation

"The Secretary of Defense shall prescribe regulations governing the performance within the Department of Defense of the procurement, production, warehousing, and supply distribution functions, and related functions, of the Department of Defense.".

SEC. 3082. REPEAL OF REQUIREMENTS REGARDING PRODUCT EVALUATION ACTIVITIES.

(a) REPEAL.—Section 2369 of title 10, United States Code, is repealed.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 139 of such title is amended by striking out the item related to section 2369.

SEC. 3083. CODIFICATION AND REVISION OF LIMITATION ON LEASE OF VESSELS, AIRCRAFT, AND VEHICLES.

(a) LIMITATION.—

(1) IN GENERAL.—Chapter 141 of title 10, United States Code, is amended by adding at the end the following new section:

"§2410l. Lease of vessels, aircraft, and vehicles

"The head of an agency named in paragraph (1), (2), (3), or (4) of section 2303(a) of this title may not enter into any contract with a term of 18 months or more, or extend or renew any contract for a term of 18 months or more, for any vessel, aircraft, or vehicle, through a lease, charter, or similar agreement without previously having considered all costs of such lease (including estimated termination liability) and determined in writing that such lease is in the best interest of the Government.".

(2) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by adding at the end the following:

"2410l. Lease of vessels, aircraft, and vehicles.".

(b) REPEAL OF SUPERSEDED PROVISION.—Section 9081 of Public Law 101-165 (103 Stat. 1147; 10 U.S.C. 2401 note) is repealed.

SEC. 3084. SOFT DRINK SUPPLIES FOR EXCHANGE STORES.

Section 2424 of title 10, United States Code, is amended by adding at the end the following new subsection:

"(c) Paragraphs (1) and (2) of subsection (b) do not apply to contracts for the procurement of soft drinks that are manufactured in the United States. The Secretary of Defense shall prescribe in regulations the standards and procedures for determining whether a particular drink is a soft drink and whether the drink was manufactured in the United States.".

SEC. 3085. REPEAL OF PREFERENCE FOR RECYCLED TONER CARTRIDGES.

The following provisions of law, relating to a preference for procurement of recycled toner cartridges, are repealed:

(1) Section 630 of Public Law 102-393 (106 Stat. 1773) and the provision of law set out in quotes in that section (42 U.S.C. 6962(j)).

(2) Section 401 of Public Law 103-123 (107 Stat. 1238).

TITLE IV—SIMPLIFIED ACQUISITION THRESHOLD AND SOCIOECONOMIC, SMALL BUSINESS, AND MISCELLANEOUS LAWS

Subtitle A—Simplified Acquisition Threshold

PART I—ESTABLISHMENT OF THRESHOLD

SEC. 4001. SIMPLIFIED ACQUISITION THRESHOLD.

(a) TERM DEFINED.—Section 4(11) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(11)) is amended to read as follows:

"(11) The term 'simplified acquisition threshold' means $100,000.".

(b) INTERIM REPORTING RULE.—Until October 1, 1999, procuring activities shall continue to report procurement awards with a dollar value of at least $25,000, but less than $100,000, in conformity with the procedures for the reporting of a contract award in excess of $25,000 that were in effect on October 1, 1992.

PART II—SIMPLIFICATION OF PROCEDURES

SEC. 4011. SIMPLIFIED ACQUISITION PROCEDURES.

The Office of Federal Procurement Policy Act (41 U.S.C. 401 et seq.) is amended by adding at the end the following new section:

"SIMPLIFIED ACQUISITION PROCEDURES

"SEC. 29. (a) In order to promote efficiency and economy in contracting and to avoid unnecessary burdens for agencies and contractors, the Federal Acquisition Regulation shall provide for special simplified procedures for contracts for acquisition of property and services that are not in excess of the simplified acquisition threshold.

"(b) Regulations prescribed pursuant to subsection (a) shall include the following provisions:

"(1) A provision that a contract with an anticipated value not in excess of $2,500 is not subject to section 15(j) of the Small Business Act (15 U.S.C. 644(j)) and section 2 of title III of the Act of March 3, 1933 (commonly known as the 'Buy America Act') (41 U.S.C. 10a et seq.).

"(2) A provision that a civilian or military official, or employee of an agency, whose contracting authority does not exceed $2,500 is not a procurement official for the purposes of section 27 of this Act.

"(3) A provision that a purchase not in excess of $2,500 may be made without obtaining competitive quotations if the contracting officer determines that the price for the purchase is reasonable.

"(4) A requirement that purchases not in excess of $2,500 be distributed equitably among qualified suppliers.

"(c) A proposed purchase or contract for an amount above the simplified acquisition threshold may not be divided into several purchases or contracts for lesser amounts in order to use the simplified acquisition procedures required by subsection (a).

"(d) In using simplified acquisition procedures, the head of an executive agency shall promote competition to the maximum extent practicable.".

SEC. 4012. SMALL BUSINESS RESERVATION.

Section 15(j) of the Small Business Act (15 U.S.C. 644(j)) is amended to read as follows:

"(j)(1) Each contract for the purchase of goods and services that has an anticipated value in excess of $2,500 but not in excess of the simplified acquisition threshold and that is subject to simplified acquisition procedures prescribed pursuant to section 29 of the Office of Federal Procurement Policy Act shall be reserved exclusively for small business concerns unless the contracting officer is unable to obtain offers from two or more small business concerns that are competitive with market prices and are competitive with regard to the quality and delivery of the goods or services being purchased.

"(2) In carrying out paragraph (1), a contracting officer shall consider a responsive offer timely received from an eligible small business offeror.

"(3) Nothing in paragraph (1) shall be construed as precluding an award of a contract with a value not in excess of the simplified acquisition threshold under the authority of section 8(a) of this Act, section 2323 of title 10, United States Code, or section 712 of the Business Opportunity Development Reform Act of 1988 (Public Law 100-656; 15 U.S.C. 644 note).".

SEC. 4013. FAST PAYMENT UNDER SIMPLIFIED ACQUISITION PROCEDURES.

(a) PAYMENT PROCEDURES.—The simplified acquisition procedures described in section 29(a) of the Office of Federal Procurement Policy Act (as added by section 4011) shall provide for use of the payment terms described in subsection (b), and for the disbursement of payment through

electronic fund transfer, whenever circumstances permit.

(b) REQUIRED PAYMENT TERMS.—The payment terms for a purchase made pursuant to simplified acquisition procedures shall require payment, in accordance with the provisions of chapter 39 of title 31, United States Code, within 15 days after the date of the receipt of a proper invoice for products delivered or services performed, if—

(1) in the case of a purchase of property, title to the property will vest in the Government upon delivery of the property to the Government or to a common carrier; and

(2) in the case of property or services for which payment is due before the Government's acceptance of the property or services, the vendor provides commercial or other appropriate warranties assuring that the property or services purchased conform to the requirements set forth in the Government's purchase offer.

SEC. 4014. PROCUREMENT NOTICE.

(a) CONTINUATION OF EXISTING NOTICE THRESHOLDS.—Subsection (a) of section 18 of the Office of Federal Procurement Policy Act (41 U.S.C. 416) is amended—

(1) in paragraph (1), by striking out "the small purchase threshold" each place it appears and inserting in lieu thereof "$25,000"; and

(2) in paragraph (3)(B), by inserting after "(B)" the following: "in the case of a contract or order expected to exceed the simplified acquisition threshold,".

(b) CONTENT OF NOTICE.—Subsection (b) of such section is amended—

(1) by striking out "and" at the end of paragraph (4);

(2) by striking out the period at the end of paragraph (5) and inserting in lieu thereof a semicolon; and

(3) by adding at the end the following:

"(6) in the case of a contract in an amount estimated to exceed $25,000 but not to exceed the simplified acquisition threshold—

"(A) a description of the procedures to be used in awarding the contract; and

"(B) a statement specifying the periods for prospective offerors and the contracting officer to take the necessary preaward and award actions.".

(c) NOTICE UNDER THE SMALL BUSINESS ACT.—

(1) CONTINUATION OF EXISTING NOTICE THRESHOLDS.—Subsection (e) of section 8 of the Small Business Act (15 U.S.C. 637) is amended—

(A) in paragraph (1), by striking out "the small purchase threshold" each place it appears and inserting in lieu thereof "$25,000"; and

(B) in paragraph (3)(B), by inserting after "(B)" the following: "in the case of a contract or order estimated to exceed the simplified acquisition threshold,".

(2) CONTENT OF NOTICE.—Subsection (f) of such section is amended—

(A) by striking out "and" at the end of paragraph (4);

(B) by striking out the period at the end of paragraph (5) and inserting in lieu thereof a semicolon; and

(C) by adding at the end the following:

"(6) in the case of a contract in an amount estimated to exceed the $25,000 but not to exceed the simplified acquisition threshold—

"(A) a description of the procedures to be used in awarding the contract; and

"(B) a statement specifying the periods for prospective offerors and the contracting officer to take the necessary preaward and award actions.".

SEC. 4015. ELECTRONIC COMMERCE FOR FEDERAL GOVERNMENT PROCUREMENTS.

(a) DEVELOPMENT AND IMPLEMENTATION OF SYSTEM.—The Administrator for Federal Procurement Policy, in consultation with the heads of appropriate Federal Government agencies having applicable technical and functional expertise, may take appropriate steps to develop and implement a Federal Governmentwide architecture or design for electronic commerce that provides interoperability among users.

(b) REQUIRED CAPABILITIES.—The requirements analysis prepared to implement the architecture or design of a system of electronic commerce referred to in subsection (a) shall have the following capabilities:

(1) The maximum practicable capability for electronic exchange of such procurement information as solicitations, offers, contracts, purchase orders, invoices, payments, and other contractual documents between the private sector and the Federal Government.

(2) Capabilities that increase the access of businesses, including small business concerns, socially and economically disadvantaged small business concerns, and businesses owned predominantly by women, to Federal Government procurement opportunities.

(3) Easy access for potential Federal Government contractors.

(4) Use of nationally and internationally recognized data formats that broaden and ease electronic interchange of data.

(5) Use of Federal Government systems and networks and industry systems and networks.

(c) NOTICE AND SOLICITATION REGULATIONS.—In connection with implementation of the architecture or design referred to in subsection (a), the Federal Acquisition Regulatory Council shall ensure that the Federal Acquisition Regulation contains appropriate notice and solicitation provisions applicable to acquisitions conducted through such architecture or design. The provisions shall specify the required form and content of notices of acquisitions and the minimum periods for notifications and solicitations. Each minimum period specified for a notification or solicitation shall afford potential offerors a reasonable opportunity to respond to the notification or solicitation, as the case may be.

(d) LIMITATION OF PUBLICATION REQUIREMENT.—The requirement in section 18(a) of the Office of Federal Procurement Policy Act (41 U.S.C. 416(a)) and section 8(e) of the Small Business Act (15 U.S.C. 637(e)) for publishing notice of a solicitation in the Commerce Business Daily shall not apply to acquisitions of a Federal agency or a component of a Federal agency that are made through electronic commerce and have a value not in excess of the simplified acquisition threshold if the Administrator for Federal Procurement Policy certifies that such agency or component—

(1) has fully implemented the architecture or design referred to in subsection (a); and

(2) has procedures in place—

(A) to provide notice to potential offerors in accordance with the requirements of the Federal Acquisition Regulation prescribed pursuant to subsection (c); and

(B) to ensure that small business concerns are afforded an opportunity to respond to a solicitation of contract offers within the period specified in the solicitation.

(e) DEFINITION.—In this section, the term "simplified acquisition threshold" has the meaning given that term is section 4(11) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(11)).

PART III—APPLICABILITY OF LAWS TO ACQUISITIONS NOT IN EXCESS OF SIMPLIFIED ACQUISITION THRESHOLD

SEC. 4021. FUTURE ENACTED PROCUREMENT LAWS.

The Office of Federal Procurement Policy Act (41 U.S.C. 401 et seq.), as amended by section 4011, is further amended by adding at the end the following new section:

"APPLICABILITY OF CERTAIN LAWS TO CONTRACTS NOT EXCEEDING SIMPLIFIED ACQUISITION THRESHOLD

"SEC. 30. (a) IN GENERAL.—The applicability of a provision of law described in subsection (b) to contracts not in excess of the simplified acquisition threshold may be waived on a class basis in the Federal Acquisition Regulation. Such a waiver shall not apply to a provision of law that expressly refers to this section and prohibits the waiver of that provision of law.

"(b) REFERENCED LAW.—A provision of law referred to in subsection (a) is any provision of law enacted after the date of the enactment of the Federal Acquisition Streamlining Act of 1994 that, as determined by the Administrator for Federal Procurement Policy, sets forth policies, procedures, requirements, or restrictions for the procurement of property or services by the Federal Government.".

SEC. 4022. ARMED SERVICES ACQUISITIONS.

(a) REQUIREMENT FOR CONTRACT CLAUSE REGARDING CONTINGENT FEES.—Section 2306(b) of title 10, United States Code, is amended by adding at the end the following: "This subsection does not apply to a contract that is not in excess of the simplified acquisition threshold.".

(b) PROHIBITION ON LIMITING SUBCONTRACTOR DIRECT SALES TO THE UNITED STATES.—Section 2402 of title 10, United States Code, is amended by adding at the end the following new subsection:

"(c) This section does not apply to a contract that is not in excess of the simplified acquisition threshold (as defined in section 4(11) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(11))).".

(c) AUTHORITY TO EXAMINE BOOKS AND RECORDS OF CONTRACTORS.—Section 2313 of title 10, United States Code, as amended by section 2201, is further amended by adding at the end of subsection (f) the following:

"(2) A contract that is not in excess of the simplified acquisition threshold.".

(d) REQUIREMENT TO IDENTIFY SUPPLIERS AND SOURCES OF SUPPLIES.—Section 2384(b) of title 10, United States Code, is amended by adding at the end the following new paragraph:

"(3) The regulations prescribed pursuant to paragraph (1) do not apply to a contract that does not exceed the simplified acquisition threshold (as defined in section 4(11) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(11))).".

(e) PROHIBITION AGAINST DOING BUSINESS WITH CERTAIN OFFERORS OR CONTRACTORS.—Section 2393(d) of title 10, United States Code, is amended in the second sentence by striking out "above" and all that follows and inserting in lieu thereof "in excess of the simplified acquisition threshold (as defined in section 4(11) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(11))).".

(f) PROHIBITION ON PERSONS CONVICTED OF DEFENSE-CONTRACT RELATED FELONIES.—Section 2408(a) of title 10, United States Code, is amended by adding at the end the following new paragraph:

"(4) The prohibition in paragraph (1) does not apply with respect to the following:

"(A) A contract referred to in subparagraph (A), (B), (C), or (D) of such paragraph that is not in excess of the simplified acquisition threshold (as defined in section 4(11) of the Office of Federal Procurement Policy Act (41 U.S.C. 403 (11))).

"(B) A subcontract referred to in such subparagraph that is under a contract described in subparagraph (A).".

SEC. 4023. CIVILIAN AGENCY ACQUISITIONS.

(a) REQUIREMENT FOR CONTRACT CLAUSE REGARDING CONTINGENT FEES.—Section 304(a) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 254(a)) is amended by

adding at the end the following: "The preceding sentence does not apply to a contract that is not in excess of the simplified acquisition threshold.".

(b) PROHIBITION ON LIMITING SUBCONTRACTOR DIRECT SALES TO THE UNITED STATES.—Section 303G of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253g) is amended by adding at the end the following new subsection:

"(c) This section does not apply to a contract that is not in excess of the simplified acquisition threshold.".

(c) AUTHORITY TO EXAMINE BOOKS AND RECORDS OF CONTRACTORS.—Section 304B of the Federal Property and Administrative Services Act of 1949, as added by section 2251(a), is amended by adding at the end of subsection (f) the following:

"(2) A contract that is not in excess of the simplified acquisition threshold.".

SEC. 4024. ACQUISITIONS GENERALLY.

(a) LIMITATION ON USE OF FUNDS TO INFLUENCE CERTAIN FEDERAL ACTIONS.—Section 1352(e)(2)(B) of title 31, United States Code, is amended by striking out "$100,000" and inserting in lieu thereof "the simplified acquisition threshold (as defined in section 4(11) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(11)))".

(b) REQUIREMENT FOR CONTRACT CLAUSE RELATING TO KICKBACKS.—Section 7 of the Anti-Kickback Act of 1986 (41 U.S.C. 57) is amended by adding at the end the following new subsection:

"(d) Subsections (a) and (b) do not apply to a prime contract that is not in excess of the simplified acquisition threshold (as defined in section 4(11) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(11))).".

(c) MILLER ACT.—

(1) IN GENERAL.—

(A) CONTRACTS NOT EXCEEDING SIMPLIFIED ACQUISITION THRESHOLD.—The Act of August 24, 1935 (40 U.S.C. 270a et seq.), commonly referred to as the "Miller Act", is amended by adding at the end the following new section:

"SEC. 5. This Act does not apply to a contract in an amount that is not in excess of the simplified acquisition threshold (as defined in section 4(11) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(11))).".

(B) CONFORMING AMENDMENT.—Subsection (a) of the first section of such Act is amended by striking out ", exceeding $25,000 in amount,".

(2) ALTERNATIVE PAYMENT PROTECTIONS.—

(A) PROTECTIONS TO BE SPECIFIED IN THE FAR.—The Federal Acquisition Regulation shall provide alternatives to payment bonds as payment protections for suppliers of labor and materials under contracts referred to in subparagraph (C).

(B) USE OF AUTHORIZED PROTECTIONS.—The contracting officer for a contract shall—

(i) select, from among the payment protections provided for in the Federal Acquisition Regulation pursuant to subparagraph (A), one or more payment protections which the offeror awarded the contract is to submit to the Federal Government for the protection of suppliers of labor and materials for such contract; and

(ii) specify in the solicitation of offers for such contract the payment protection or protections so selected.

(C) COVERED CONTRACTS.—

(i) APPLICABILITY.—The regulations required under subparagraph (A) and the requirements of subparagraph (B) apply with respect to contracts referred to in subsection (a) of the first section of the Miller Act that are in excess of $25,000 but not in excess of the simplified acquisition threshold (as defined in section 4(11) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(11))).

(ii) MILLER ACT REFERENCE.—The Miller Act referred to in subparagraph (A) is the Act of August 24, 1935 (40 U.S.C. 270a et seq.), commonly referred to as the "Miller Act".

(d) CONTRACT WORK HOURS AND SAFETY STANDARDS ACT.—

(1) IN GENERAL.—Section 103 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 329) is amended by adding at the end the following new subsection:

"(c) This title does not apply to a contract in an amount that is not in excess of the simplified acquisition threshold (as defined in section 4(11) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(11))).".

(2) CONFORMING AMENDMENT.—Section 107(a) of such Act (40 U.S.C. 333(a)) is amended by inserting after "It shall be a condition of each contract" the following: "(other than a contract referred to in section 103(c))".

(e) DRUG-FREE WORKPLACE ACT OF 1988.—Section 5152(a)(1) of the Drug-Free Workplace Act of 1988 (subtitle D of title V of the Anti-Drug Abuse Act of 1988; Public Law 100-690; 41 U.S.C. 701(a)(1)) is amended by striking out "of $25,000 or more from any Federal agency" and inserting in lieu thereof "in excess of the simplified acquisition threshold (as defined in section 4(11) of such Act (41 U.S.C. 403(11))) by any Federal agency".

(f) CERTAIN PROCUREMENT INTEGRITY REQUIREMENTS.—

(1) CERTIFICATION REQUIREMENT.—Subsection (e)(7)(A) of section 27 of the Office of Federal Procurement Policy Act (41 U.S.C. 423) is amended by striking out "$100,000" and inserting in lieu thereof "the simplified acquisition threshold".

(2) CONTRACT CLAUSE REQUIREMENT.—Subsection (g)(1) of such section is amended by inserting after "awarded by a Federal agency" the following: "(other than a contract in an amount that is not in excess of the simplified acquisition threshold)".

(g) SOLID WASTE DISPOSAL ACT.—Section 6002(a) of the Solid Waste Disposal Act (42 U.S.C. 6962(a)) is amended by striking out all that follows "with respect to any" and inserting in lieu thereof "contract in excess of the simplified acquisition threshold (as defined in section 4(11) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(11))).".

PART IV—CONFORMING AMENDMENTS

SEC. 4071. ARMED SERVICES ACQUISITIONS.

(a) SIMPLIFIED ACQUISITION PROCEDURES.—Section 2304(g) of title 10, United States Code, is amended—

(1) in paragraph (1), by striking out "small purchases of property and services" and inserting in lieu thereof "purchases of property and services not in excess of the simplified acquisition threshold";

(2) by striking out paragraph (2);

(3) by redesignating paragraphs (3) and (4) as paragraphs (2) and (3), respectively;

(4) in paragraph (2), as so redesignated—

(A) by striking out "small purchase threshold" and inserting in lieu thereof "simplified acquisition threshold"; and

(B) by striking out "small purchase procedures" and inserting in lieu thereof "simplified procedures"; and

(5) in paragraph (3), as redesignated by paragraph (3), by striking out "small purchase procedures" and inserting in lieu thereof "the simplified procedures".

(b) SOLICITATION CONTENT REQUIREMENT.—Section 2305(a)(2) of title 10, United States Code, is amended by striking out "small purchases)" in the matter above subparagraph (A) and inserting in lieu thereof "purchases not in excess of the simplified acquisition threshold)".

(c) COST TYPE CONTRACTS.—Section 2306(e)(2)(A) of title 10, United States Code, is amended by striking out "small purchase threshold" and inserting in lieu thereof "simplified acquisition threshold".

SEC. 4072. CIVILIAN AGENCY ACQUISITIONS.

(a) SIMPLIFIED ACQUISITION PROCEDURES.—

(1) PROPERTY AND SERVICES GENERALLY.—Section 303(g) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253(g)) is amended—

(A) in paragraph (1), by striking out "small purchases of property and services" and inserting in lieu thereof "purchases of property and services not in excess of the simplified acquisition threshold";

(B) by striking out paragraphs (2) and (5);

(C) by redesignating paragraphs (3) and (4) as paragraphs (2) and (3), respectively;

(D) in paragraph (2), as so redesignated—

(i) by striking out "small purchase threshold" and inserting in lieu thereof "simplified acquisition threshold"; and

(ii) by striking out "small purchase procedures" and inserting in lieu thereof "simplified procedures"; and

(E) in paragraph (3), as redesignated by subparagraph (C), by striking out "small purchase procedures" and inserting in lieu thereof "the simplified procedures".

(2) LEASEHOLDS.—Section 210 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 490) is amended by adding at the end the following new subsection:

"(k)(1) Regulations prescribed by the Administrator shall provide special simplified procedures for acquisitions of leasehold interests in real property at rental rates that do not exceed the simplified acquisition threshold.

"(2) For purposes of paragraph (1), the rental rate or rates under a multiyear lease do not exceed the simplified acquisition threshold if the average annual amount of the rent payable for the period of the lease does not exceed the simplified acquisition threshold.

"(3) In this subsection, the term 'simplified acquisition threshold' has the meaning given that term in section 4(11) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(11)).".

(b) SOLICITATION CONTENT REQUIREMENT.—Section 303A(b) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253a(b)) is amended by striking out "small purchases)" in the matter above paragraph (1) and inserting in lieu thereof "purchases not in excess of the simplified acquisition threshold)".

(c) COST TYPE CONTRACTS.—Section 304(b) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 254(b)), as amended by section 1071, is further amended in the second sentence by striking out "either $25,000" and inserting in lieu thereof "either the simplified acquisition threshold".

SEC. 4073. OFFICE OF FEDERAL PROCUREMENT POLICY ACT.

Section 19(a) of the Office of Federal Procurement Policy Act (41 U.S.C. 417(a)) is amended by striking out "procurements, other than small purchases," and inserting in lieu thereof "procurements in excess of the simplified acquisition threshold".

SEC. 4074. SMALL BUSINESS ACT.

(a) DEFINITION.—Section 3(m) of the Small Business Act (15 U.S.C. 632(m)) is amended by striking out "'small purchase threshold'" and inserting in lieu thereof "'simplified acquisition threshold'".

(b) USE OF SIMPLIFIED ACQUISITION THRESHOLD TERM.—Section 8(d)(2)(A) of the Small Business Act (15 U.S.C. 637(d)(2)(A)) is amended by striking out "small purchase threshold" and inserting in lieu thereof "simplified acquisition threshold".

PART V—REVISION OF REGULATIONS

SEC. 4081. REVISION REQUIRED.

(a) FEDERAL ACQUISITION REGULATION.—The Federal Acquisition Regulatory Council established by section 25(a) of the Office of Federal Procurement Policy Act (41 U.S.C. 421(a)) shall review the Federal Acquisition Regulation to identify regulations that are applicable to acquisitions in excess of a specified amount that is less than $100,000. The Council shall amend the regulations so identified as necessary to provide that such regulations do not apply to acquisitions that are not in excess of the simplified acquisition threshold. The preceding sentence does not apply in the case of a regulation for which such an amendment would not be in the national interest, as determined by the Council.

(b) SUPPLEMENTAL REGULATIONS.—The head of each Federal agency that has issued regulations, policies, or procedures referred to in section 25(c)(2) of the Office of Federal Procurement Policy Act (41 U.S.C. 421(c)(2)) shall identify any such regulations, policies, or procedures that are applicable to acquisitions in excess of a specified amount that is less than $100,000. The agency head shall amend the regulations so identified as necessary to provide that such regulations, policies, and procedures do not apply to acquisitions that are not in excess of the simplified acquisition threshold. The preceding sentence does not apply in the case of a regulation, policy, or procedure for which such an amendment would not be in the national interest, as determined by the agency head.

(c) COMPLETION OF ACTIONS.—All actions under this section shall be completed not later than 180 days after the date of the enactment of this Act.

(d) DEFINITIONS.—In this section:

(1) The term "simplified acquisition threshold" has the meaning given such term in section 4(11) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(11)), as amended by section 4001.

(2) The term "Federal agency" has the meaning given such term in section 3(b) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 472(b)).

Subtitle B—Socioeconomic and Small Business Laws

SEC. 4101. ARMED SERVICES ACQUISITIONS.

(a) INAPPLICABILITY OF CERTAIN LABOR LAWS TO CONSTRUCTION OF NAVAL VESSELS.—Section 7299 of title 10, United States Code, is amended to read as follows: "No contract for the construction, alteration, furnishing, or equipping of a naval vessel shall be subject to the Act of March 3, 1931 (40 U.S.C. 276a(a)), commonly referred to as the 'Davis-Bacon Act', or to the Service Contract Act of 1965 (41 U.S.C. 351 et seq.), unless the President determines that such requirement is in the interest of national defense.".

(b) CLERICAL AMENDMENTS.—

(1) SECTION HEADING.—The heading of such section is amended to read as follows:

"§7299. Contracts: applicability of certain labor laws".

(2) TABLE OF SECTIONS.—The item relating to such section in the table of sections at the beginning of chapter 633 of title 10, United States Code, is amended to read as follows:

"7299. Contracts: applicability of certain labor laws.".

SEC. 4102. ACQUISITIONS GENERALLY.

(a) INAPPLICABILITY OF CERTAIN LABOR LAWS TO CONSTRUCTION OF VESSELS.—No contract for the construction, alteration, furnishing, or equipping of a vessel shall be subject to the Act of March 3, 1931 (40 U.S.C. 276a(a)), commonly referred to as the 'Davis-Bacon Act', or to the Service Contract Act of 1965 (41 U.S.C. 351 et seq.), unless the President determines that such requirement is in the interest of the United States.

(b) REPEAL OF EXECUTED REPORTING REQUIREMENT.—Section 306 of the Trade Agreements Act of 1979 (19 U.S.C. 2516) is repealed.

(c) WALSH-HEALEY ACT.—

(1) REPEAL OTHER THAN FOR CERTAIN DEFINITIONAL PURPOSES.—The Act of June 30, 1936 (41 U.S.C. 35 et seq.), commonly referred to as the "Walsh-Healey Act", is amended to read as follows:

"SECTION 1. (a) The Secretary of Labor may prescribe in regulations the standards for determining whether a contractor is a manufacturer of or a regular dealer in materials, supplies, articles, or equipment to be manufactured or used in the performance of a contract entered into by any executive department, independent establishment, or other agency or instrumentality of the United States, or by the District of Columbia, or by any corporation all the stock of which is beneficially owned by the United States, for the manufacture or furnishing of materials, supplies, articles, and equipment.

"(b) Any interested person shall have the right of judicial review of any legal question regarding the interpretation of the terms 'regular dealer' and 'manufacturer', as defined pursuant to subsection (a)."

(2) CONFORMING AMENDMENT.—Section 2304(h) of title 10, United States Code, is amended to read as follows:

"(h) For the purposes of the Act entitled 'An Act relating to the rate of wages for laborers and mechanics employed on public buildings of the United States and the District of Columbia by contractors and subcontractors, and for other purposes', approved March 3, 1931 (commonly referred to as the 'Davis-Bacon Act') (40 U.S.C. 276a et seq.), purchases or contracts awarded after using procedures other than sealed-bid procedures shall be treated as if they were made with sealed-bid procedures.".

(d) REPEAL OF REDUNDANT REQUIREMENT REGARDING APPLICABILITY OF THE DAVIS-BACON ACT AND THE WALSH-HEALEY ACT.—Section 308 of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 258) is repealed.

SEC. 4103. ACQUISITIONS FROM SMALL BUSINESSES.

(a) SET-ASIDE PRIORITY.—Section 15 of the Small Business Act (15 U.S.C. 644) is amended by striking out subsections (e) and (f).

(b) CERTIFICATE OF COMPETENCE.—Section 804 of Public Law 103-484 (106 Stat. 2447; 10 U.S.C. 2305 note) is repealed.

SEC. 4104. CONTRACTING PROGRAM FOR CERTAIN SMALL BUSINESS CONCERNS.

(a) PROCUREMENT PROCEDURES AUTHORIZED.—Section 8 of the Small Business Act (15 U.S.C. 637) is amended by inserting after subsection (b) the following new subsection:

"(c)(1) To facilitate the attainment of a goal for the participation of small business concerns owned and controlled by socially and economically disadvantaged individuals that is established for a Federal agency pursuant to section 15(g)(1), the head of the agency may enter into contracts using—

"(A) less than full and open competition by restricting the competition for such awards to small business concerns owned and controlled by socially and economically disadvantaged individuals described in subsection (d)(3)(C) of this section; and

"(B) a price evaluation preference not in excess of 10 percent when evaluating an offer received from such a small business concern as the result of an unrestricted solicitation.

"(2) Paragraph (1) does not apply to the Department of Defense.".

(b) IMPLEMENTATION THROUGH THE FEDERAL ACQUISITION REGULATION.—

(1) IN GENERAL.—The Federal Acquisition Regulation shall be amended to provide for uniform implementation of the authority provided in section 8(c) of the Small Business Act, as added by subsection (a).

(2) MATTERS TO BE ADDRESSED.—The provisions of the Federal Acquisition Regulation prescribed pursuant to paragraph (1) shall include—

(A) conditions for the use of advance payments;

(B) provisions for contract payment terms that provide for—

(i) accelerated payment for work performed during the period for contract performance; and

(ii) full payment for work performed;

(C) guidance on how contracting officers may use, in solicitations for various classes of products or services, a price evaluation preference pursuant to section 8(c)(1)(B) of the Small Business Act, as added by subsection (a), to provide a reasonable advantage to small business concerns owned and controlled by socially and economically disadvantaged individuals without effectively eliminating any participation of other small business concerns; and

(D)(i) procedures for a person to request the head of Federal agency to determine whether the use of competitions restricted to small business concerns owned and controlled by socially and economically disadvantaged individuals at a contracting activity of such agency has caused a particular industry category to bear a disproportionate share of the contracts awarded to attain the goal established for that contracting activity; and

(ii) guidance for limiting the use of such restricted competitions in the case of any contracting activity and class of contracts determined in accordance with such procedures to have caused a particular industry category to bear a disproportionate share of the contracts awarded to attain the goal established for that contracting activity.

(c) TERMINATION.—Section 8(c) of the Small Business Act, as added by subsection (a), shall cease to be effective at the end of September 30, 1999.

Subtitle C—Miscellaneous Acquisition Laws

SEC. 4151. PROHIBITION ON USE OF FUNDS FOR DOCUMENTING ECONOMIC OR EMPLOYMENT IMPACT OF CERTAIN ACQUISITION PROGRAMS.

(a) REVISION AND CODIFICATION.—

(1) IN GENERAL.—Subchapter I of chapter 13. of title 10, United States Code, is amended by adding at the end the following new section:

"§2247. Prohibition on use of funds for documenting economic or employment impact of certain acquisition programs

"No funds appropriated by the Congress may be obligated or expended to assist any contractor of the Department of Defense in preparing any material, report, lists, or analysis with respect to the actual or projected economic or employment impact in a particular State or congressional district of an acquisition program for which all research, development, testing, and evaluation has not been completed.".

(2) CLERICAL AMENDMENT.—The table of sections at the beginning of such subchapter is amended by adding at the end the following new item:

"2247. Prohibition on use of funds for documenting economic or employment impact of certain acquisition programs.".

(b) REPEAL OF SUPERSEDED LAW.—Section 9048 of Public Law 102-396 (106 Stat. 1913) is repealed.

SEC. 4152. RESTRICTION ON USE OF NON-COMPETITIVE PROCEDURES FOR PROCUREMENT FROM A PARTICULAR SOURCE.

(a) ARMED SERVICES ACQUISITIONS.—Section 2304 of title 10, United States Code, as amended by section 1005(b), is further amended—

(1) in subsection (c)(5), by inserting "subject to subsection (j)," after "(5)"; and

(2) by adding at the end the following new subsection:

"(j)(1) It is the policy of Congress that no legislation should be enacted that requires a procurement to be made from a specified non-Federal Government source.

"(2) A provision of law may not be construed as requiring a procurement to be made from a specified non-Federal Government source unless that provision of law—

"(A) specifically refers to this subsection;

"(B) specifically identifies the particular non-Federal Government source involved; and

"(C) specifically states that the procurement from that source is required by such provision of law in contravention of the policy set forth in paragraph (1).".

(b) CIVILIAN AGENCY ACQUISITIONS.—Section 303 of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253) is amended—

(1) in subsection (c)(5), by inserting "subject to subsection (h)," after "(5)"; and

(2) by adding at the end the following new subsection:

"(h)(1) It is the policy of Congress that no legislation should be enacted that requires a procurement to be made from a specified non-Federal Government source.

"(2) A provision of law may not be construed as requiring a procurement to be made from a specified non-Federal Government source unless that provision of law—

"(A) specifically refers to this subsection;

"(B) specifically identifies the particular non-Federal Government source involved; and

"(C) specifically states that the procurement from that source is required by such provision of law in contravention of the policy set forth in paragraph (1).".

TITLE V—ACQUISITION MANAGEMENT

Subtitle A—Armed Services Acquisitions

SEC. 5001. PERFORMANCE BASED MANAGEMENT.

(a) POLICY AND GOALS FOR PERFORMANCE BASED MANAGEMENT OF PROGRAMS.—

(1) IN GENERAL.—Chapter 131 of title 10, United States Code, is amended by adding at the end the following new section:

"§2219. Performance based management: acquisition programs

"(a) CONGRESSIONAL POLICY.—It is the policy of Congress that—

"(1) the Department of Defense should achieve, on average, 90 percent of the cost and schedule goals established for the research and development programs and acquisition programs of the Department of Defense without reducing the performance or capabilities of the items being acquired; and

"(2) the average period necessary for converting an emerging technology into initial operational capability for the Department of Defense should not exceed 8 years.

"(b) ESTABLISHMENT OF GOALS.—(1) The Secretary of Defense shall approve or define the cost, performance, and schedule goals for major defense acquisition programs of the Department of Defense.

"(2) The Comptroller of the Department of Defense shall evaluate the cost goals proposed for each major defense acquisition program of the Department.

"(c) IDENTIFICATION OF NONCOMPLIANT PROGRAMS.—Whenever it is necessary to do so in order to implement the policy set out in subsection (a), the Secretary of Defense shall—

"(1) identify and consider whether there is a continuing need for programs that are significantly behind schedule, over budget, or not in compliance with performance or capability requirements taking into consideration—

"(A) the needs of the Department known as of the time of consideration;

"(B) the state of the technology or technologies relevant to the programs and to the needs of the Department;

"(C) the estimated costs and projected schedules necessary for the completion of such programs; and

"(D) other pertinent information; and

"(2) identify existing and potential research and development programs and acquisition programs that are suitable alternatives for programs considered pursuant to paragraph (1).

"(d) ANNUAL REPORTING REQUIREMENT.—The Secretary of Defense shall include in the annual report submitted to Congress pursuant to section 113(c) of this title an assessment of the progress made in implementing the policy stated in subsection (a). The Secretary shall use data from existing management systems in making the assessment.".

(2) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

"2219. Performance based management: acquisition programs.".

(b) ENHANCED SYSTEM OF PERFORMANCE INCENTIVES.—Within one year after the date of the enactment of this Act, the Secretary of Defense shall review the incentives and personnel actions available to the Secretary for encouraging excellence in the defense acquisition workforce and provide an enhanced system of incentives for the encouragement of excellence in such workforce. The enhanced system of incentives shall, to the maximum extent consistent with applicable law—

(1) relate pay to performance (including the extent to which the performance of personnel in such workforce contributes to achieving the cost goals, schedule goals, and performance goals established for acquisition programs of the department pursuant to section 2219(b) of title 10, as added by subsection (a)); and

(2) provide for consideration, in personnel evaluations and promotion decisions, of the extent to which the performance of personnel in such workforce contributes to achieving the cost goals, schedule goals, and performance goals established for acquisition programs of the department pursuant to section 2219(b) of title 10, United States Code, as added by subsection (a).

(c) RECOMMENDED LEGISLATION.—Not later than one year after the date of the enactment of this Act, the Secretary of Defense shall submit to Congress any recommended legislation that the Secretary considers necessary to carry out section 2219 of title 10, United States Code, as added by subsection (a), and otherwise to facilitate and enhance management of Department of Defense acquisition programs and the defense acquisition workforce on the basis of performance.

SEC. 5002. RESULTS ORIENTED ACQUISITION PROGRAM CYCLE.

The Secretary of Defense shall define in regulations a simplified acquisition program cycle that is results-oriented. The Secretary shall consider including in the regulations provisions for the following:

(1) Program phases as follows:

(A) An integrated decision team meeting which—

(i) may be requested by a potential user of the system or component to be acquired, the head of a laboratory, or a program office on such bases as the emergence of a new military requirement, cost savings opportunity, or new technology opportunity;

(ii) is conducted by an acquisition program executive officer; and

(iii) is usually completed within 1 to 3 months.

(B) A prototype development and testing phase which—

(i) includes operational tests and concerns relating to manufacturing operations and life cycle support;

(ii) is usually completed within 6 to 36 months; and

(iii) produces sufficient numbers of prototypes to assess operational utility.

(C) Product integration, development, and testing which—

(i) includes full-scale development, operational testing, and integration of components; and

(ii) is usually completed within 1 to 5 years.

(D) Production, integration into existing systems, or production and integration into existing systems.

(2) An acquisition program approval process for major program decisions which consists of the following:

(A) One major decision point—

(i) which occurs for an acquisition program before the program proceeds into product integration and development; and

(ii) at which the Under Secretary of Defense for Acquisition and Technology, in consultation with the Vice Chairman of the Joint Chiefs of Staff reviews the program, determines whether the program should continue to be carried out beyond product integration and development, and decides whether to commit to further development, to require further prototyping, or to terminate the program.

(B) Consideration of the potential benefits, affordability, needs, and risks of an acquisition program in the review of the acquisition program.

SEC. 5003. DEFENSE ACQUISITION PILOT PROGRAM DESIGNATIONS.

(a) PROGRAMS AND WAIVERS.—The National Defense Authorization Act for Fiscal Year 1994 (Public Law 103-160) is amended by inserting the following new section at the end of subtitle D of title VIII:

"SEC. 840. DEFENSE ACQUISITION PILOT PROGRAM DESIGNATIONS.

"(a) ELIGIBLE PROGRAMS.—The Secretary of Defense is authorized to designate the following defense acquisition programs for participation in the defense acquisition pilot program authorized by section 809 of the National Defense Authorization Act for Fiscal Year 1991 (10 U.S.C. 2430 note):

"(1) Defense Personnel Support Center medical, clothing and textile, and subsistence programs with respect to the following:

"(A) All contracts for processed fruits and vegetables and frozen seafood items for both depot stock and direct vendor delivery.

"(B) All contracts in the subsistence prime vendor program for grocery items.

"(C) All contracts in the Mail Order Pharmacy Program, the prime vendor programs for pharmaceuticals and for medical surgical items for delivery to military hospitals.

"(D) All contracts in the medical electronic commerce program for acquisition for depot stock and direct vendor delivery.

"(E) All contracts for the following items: dress coats (small lots), dress coats, duffel bags, Navy work clothing, general purpose tents, suitcases, gloves for electrical workers, boot flyers, socks, drawers, undershirts, and items offered under the Broad Agency Announcements for Clothing and Textiles Advanced Business Practices Demonstration Program.

"(2) The Fire Support Combined Arms Tactical Trainer program with respect to all contracts directly related to the procurement of a training system (including related hardware,

software, and subsystems) to perform collective training of field artillery gunnery team components with development of software as required to generate the training exercises and component interfaces.

"(3) The Joint Direct Attack Munition program (JDAM I) with respect to all contracts directly related to the development and procurement of a strap-on guidance kit, using an inertially guided, Global Positioning System updated guidance kit for inventory 1,000 and 2,000 pound bombs.

"(4) The Joint Primary Aircraft Training System (JPATS) with respect to all contracts directly related to the acquisition of a new primary trainer aircraft to fulfill Air Force and Navy joint undergraduate aviation training requirements, and an associated ground-based training system consisting of air crew training devices (simulators), courseware, a Training Management System, and contractor support for the life of the system.

"(5) The Commercial Derivatives Aircraft program with respect to all contracts directly related to the acquisition or upgrading of civil-derivative aircraft for use in (A) foreign military sales of Airborne Warning and Control Systems to foreign governments with modifications of a type customarily provided to commercial customers, or (B) future Air Force airlift and tanker requirements.

"(6) The Commercial Derivative Engine program with respect to all contracts directly related to the acquisition of (A) commercially derived engines (including spare engines), logistics support equipment, technical orders, management data, and initial spare parts for use in the C-17A production line, and (B) commercially derived engines to support the purchase of commercial-derivative aircraft to meet future Air Force airlift and tanker requirements, including engine replacement and upgrades.

"(b) WAIVER AUTHORITY.—Subject to section 809(c) of the National Defense Authorization Act for Fiscal Year 1991, the Secretary of Defense is authorized—

"(1) to apply any amendment or repeal of a provision of law made in the Federal Acquisition Streamlining Act of 1994 to the programs described in subsection (a) before the effective date of such amendment or repeal; and

"(2) to apply to a procurement of noncommercial items under such programs—

"(A) any authority provided in such Act (or in an amendment made by a provision of such Act) to waive a provision of law in the case of commercial items, and

"(B) any exception applicable under such Act (or an amendment made by a provision of such Act) in the case of commercial items,

before the effective date of such provision (or amendment) to the extent that the Secretary determines necessary to test the application of such waiver or exception to procurements of noncommercial items.

"(c) PILOT PROGRAM IMPLEMENTATION.—In exercising the authority provided in section 809 of the National Defense Authorization Act for 1991, and in accordance with sections 833 through 839 of this Act, the Secretary of Defense, shall take the following actions:

"(1) MISSION-ORIENTED PROGRAM MANAGEMENT.—For one or more of the defense acquisition programs designated for participation in the defense acquisition pilot program, prescribe and implement procedures which—

"(A) provide for interaction between the program manager and the commander of the operational command responsible for the requirement for the equipment acquired;

"(B) include provisions for a determination by the commander that items proposed for procurement fulfill the need defined in approved requirements documents; and

"(C) may include a role for the operational commander in decision making for program milestone decisions and performance of acceptance testing of items acquired.

"(2) SAVINGS OBJECTIVES.—Not later than 45 days after the date of enactment of the Federal Acquisition Streamlining Act of 1994, identify for each defense acquisition program participating in the pilot program quantitative measures and goals for reducing acquisition management costs.

"(3) PROGRAM PHASES.—For each defense acquisition program participating in the pilot program, incorporate in an approved acquisition strategy a program review process that provides senior acquisition officials with reports that—

"(A) contain essential information on program results at quarterly intervals;

"(B) reduce data requirements from the current major program review reporting requirements; and

"(C) include data on program costs estimates, actual expenditures, performance estimates, performance data from tests, and, consistent with existing statutes, the minimum necessary other data items required to ensure the appropriate expenditure of funds appropriated for that program.

"(4) PROGRAM WORK FORCE POLICIES.—With regard to the review of incentives and personnel actions required under section 836 of this Act—

"(A) not later than 60 days after the date of the enactment of the Federal Acquisition Streamlining Act of 1994—

"(i) complete the review; and

"(ii) on the basis of the review, define one or more systems that relate incentives, including pay, to achievement of budgets, schedules, and performance requirements;

"(B) not later than 120 days after the date of the enactment of the Federal Acquisition Streamlining Act of 1994—

"(i) apply such a system of incentives to not less than one defense acquisition program participating in the pilot program; and

"(ii) provide for an assessment of the effectiveness of that system; and

"(C) incorporate the results of actions taken pursuant to this paragraph into the development of regulations for the implementation of section 5001(b) of the Federal Acquisition Streamlining Act of 1994.

"(5) EFFICIENT CONTRACTING PROCESS.—Take any additional actions that the Secretary considers necessary to waive regulations, not required by statute, that affect the efficiency of the contracting process, including, in the Secretary's discretion, defining alternative techniques to reduce reliance on military specifications and standards in contracts for the defense acquisition programs participating in the pilot program.

"(6) CONTRACT ADMINISTRATION: PERFORMANCE BASED CONTRACT MANAGEMENT.—For at least one participating defense acquisition program for which a determination is made to make payments for work in progress under the authority of section 2307 of title 10, United States Code, define payment milestones on the basis of quantitative measures of results.

"(7) CONTRACTOR PERFORMANCE ASSESSMENT.—Collect and evaluate performance information on each contract entered into for a defense acquisition program participating in the pilot program, including information on cost, schedule, and technical performance for each contractor supporting a participating program.

"(d) APPLICABILITY.—(1) Subsection (b) applies with respect to—

"(A) a contract that is awarded or modified during the period described in paragraph (2); and

"(B) a contract that is awarded before the beginning of such period and is to be performed (or may be performed), in whole or in part, during such period.

"(2) The period referred to in paragraph (1) is the period that begins 45 days after the date of the enactment of the Federal Acquisition Streamlining Act of 1994 and ends on September 30, 1998.".

(b) RULE OF CONSTRUCTION.—Nothing in section 840 of the National Defense Authorization Act for Fiscal Year 1994, as added by subsection (a), shall be construed as authorizing the appropriation or obligation of funds for the programs designated for participation in the defense acquisition pilot program under the authority of subsection (a) of such section 840.

Subtitle B—Civilian Agency Acquisitions

SEC. 5051. PERFORMANCE BASED MANAGEMENT.

(a) POLICY AND GOALS FOR PERFORMANCE BASED MANAGEMENT OF PROGRAMS.—

(1) IN GENERAL.—Title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 301 et seq.), as amended by sections 1552 and 1553, is further amended by adding at the end the following new section:

"PERFORMANCE BASED MANAGEMENT: ACQUISITION PROGRAMS

"SEC. 311. (a) CONGRESSIONAL POLICY.—It is the policy of Congress that the head of each executive agency should achieve, on average, 90 percent of the cost and schedule goals established for the research and development programs and acquisition programs of the agency without reducing the performance or capabilities of the items being acquired.

"(b) ESTABLISHMENT OF GOALS.—(1) The head of each executive agency shall approve or define the cost, performance, and schedule goals for major acquisition programs of the agency.

"(2) The chief financial officer of an executive agency shall evaluate the cost goals proposed for each major defense acquisition program of the agency.

"(c) IDENTIFICATION OF NONCOMPLIANT PROGRAMS.—Whenever it is necessary to do so in order to implement the policy set out in subsection (a), the head of an executive agency shall—

"(1) identify and consider whether there is a continuing need for programs that are significantly behind schedule, over budget, or not in compliance with performance or capability requirements taking into consideration—

"(A) the needs of the agency known as of the time of consideration;

"(B) the state of the technology or technologies relevant to the programs and to the needs of the agency;

"(C) the estimated costs and projected schedules necessary for the completion of such programs; and

"(D) other pertinent information; and

"(2) identify existing and potential research and development programs and acquisition programs that are suitable alternatives for programs considered pursuant to paragraph (1).".

(2) CLERICAL AMENDMENT.—The table of contents in the first section of such Act, as amended by sections 1552 and 1553, is further amended by inserting after the item relating to section 310 the following new item:

"Sec. 311. Performance based management: acquisition programs.".

(b) ANNUAL REPORTING REQUIREMENT.—Section 6 of the Office of Federal Procurement Policy Act (41 U.S.C. 405), as amended by section 1091, is further amended by adding at the end the following new subsection:

"(k) The Administrator shall submit to Congress, on an annual basis, an assessment of the progress made in executive agencies in implementing the policy stated in section 311(a) of the Federal Property and Administrative Services Act of 1949. The Administrator shall use data

from existing management systems in making the assessment.".

(c) ENHANCED SYSTEM OF PERFORMANCE INCENTIVES.—Within one year after the date of the enactment of this Act, the Administrator for Federal Procurement Policy, in consultation with appropriate officials in other departments and agencies of the Federal Government, shall, to the maximum extent consistent with applicable law—

(1) establish policies and procedures for the heads of such departments and agencies to designate acquisition positions and manage employees (including the accession, education, training and career development of employees) in the designated acquisition positions;

(2) extend to the acquisition workforce of the entire executive branch the acquisition workforce policies contained in chapter 87 of title 10, United States Code, relating to the acquisition workforce of the Department of Defense; and

(3) review the incentives and personnel actions available to the heads of department and agencies of the Federal Government for encouraging excellence in the acquisition workforce of the Federal Government and provide an enhanced system of incentives for the encouragement of excellence in such workforce which—

(A) relates pay to performance (including the extent to which the performance of personnel in such workforce contributes to achieving the cost goals, schedule goals, and performance goals established for acquisition programs pursuant to section 311(b) of the Federal Property and Administrative Services Act of 1949, as added by subsection (a)); and

(B) provides for consideration, in personnel evaluations and promotion decisions, of the extent to which the performance of personnel in such workforce contributes to achieving such cost goals, schedule goals, and performance goals.

(d) RECOMMENDED LEGISLATION.—Not later than one year after the date of the enactment of this Act, the Administrator for Federal Procurement Policy shall submit to Congress any recommended legislation that the Secretary considers necessary to carry out section 311 of the Federal Property and Administrative Services Act of 1949, as added by subsection (a), and otherwise to facilitate and enhance management of Federal Government acquisition programs and the acquisition workforce of the Federal Government on the basis of performance.

SEC. 5052. RESULTS-ORIENTED ACQUISITION PROCESS.

(a) DEVELOPMENT OF PROCESS REQUIRED.—The Administrator for Federal Procurement Policy, in consultation with the heads of appropriate Federal agencies, shall develop a results-oriented acquisition process for implementation by agencies in acquisitions of property and services by the Federal agencies. The process shall include the identification of quantitative measures and standards for determining the extent to which an acquisition of noncommercial items by a Federal agency satisfies the needs for which the items are being acquired.

(b) INAPPLICABILITY OF PROCESS TO DEPARTMENT OF DEFENSE.—The process developed pursuant to subsection (a) may not be applied to the Department of Defense.

Subtitle C—Miscellaneous

SEC. 5091. CONTRACTOR EXCEPTIONAL PERFORMANCE AWARDS.

The Office of Federal Procurement Policy Act, as amended by section 4021, is further amended by adding at the end the following:

"CONTRACTOR EXCEPTIONAL PERFORMANCE AWARDS

"SEC. 31. (a) ESTABLISHMENT.—There is hereby established an executive branch program to recognize and promote exceptional contract performance by Federal Government contractors.

"(b) SELECTION.—(1) The Administrator shall ensure the establishment of criteria for selection of contractors to receive exceptional performance awards under the program.

"(2) The head of an executive agency may select one or more agency contractors to receive an exceptional performance award under the program.

"(c) AWARD CEREMONY.—The Vice President, or the head of the executive agency selecting a contractor for an exceptional performance award, shall present the award to the contractor with such ceremony as the Vice President or head of the agency, as the case may be, considers appropriate.".

SEC. 5092. DEPARTMENT OF DEFENSE ACQUISITION OF INTELLECTUAL PROPERTY RIGHTS.

Section 2386 of title 10, United States Code, is amended by striking out paragraphs (3) and (4) and inserting in lieu thereof the following:

"(3) Technical data and computer software.

"(4) Releases for past infringement of patents or copyrights or for unauthorized use of technical data or computer software.".

TITLE VI—STANDARDS OF CONDUCT

Subtitle A—Ethics Provisions

SEC. 6001. AMENDMENTS TO OFFICE OF FEDERAL PROCUREMENT POLICY ACT.

(a) RECUSAL.—Subsection (c) of section 27 of the Office of Federal Procurement Policy Act (41 U.S.C. 423) is amended—

(1) in paragraph (1)—

(A) in the matter above subparagraph (A), by inserting "only" after "subsection (b)(1)"; and

(B) in subparagraph (A), by inserting "(including the modification or extension of a contract)" after "any procurement";

(2) by striking out paragraphs (2) and (3) and inserting in lieu thereof:

"(2) Whenever the head of a procuring activity approves a recusal under paragraph (1), a copy of the recusal request and the approval of the request shall be retained by such official for a period (not less than five years) specified in regulations prescribed in accordance with subsection (o).

"(3)(A) Except as provided in subparagraph (B), all recusal requests and approvals of recusal requests pursuant to this subsection shall be made available to the public on request.

"(B) Any part of a recusal request or an approval of a recusal request that is exempt from the disclosure requirements of section 552 of title 5, United States Code, under subsection (b)(1) of such section may be withheld from disclosure to the public otherwise required under subparagraph (A)."; and

(3) in paragraph (4), by striking out "competing contractor" and inserting in lieu thereof "person".

(b) APPLICABILITY OF CERTIFICATION REQUIREMENT.—Subsection (e)(7)(A) of such section is amended by adding at the end the following: "However, paragraph (1)(B) does not apply with respect to a contract for less than $500,000.".

(c) RESTRICTIONS RESULTING FROM PROCUREMENT ACTIVITIES OF PROCUREMENT OFFICIALS.—Subsection (f) of such section is amended—

(1) by redesignating paragraph (3) as paragraph (4); and

(2) by striking out paragraphs (1) and (2) and inserting in lieu thereof the following:

"(1) No individual who, in the year prior to separation from service as an officer or employee of the Government or an officer of the uniformed services in a covered position, participated personally and substantially in acquisition functions related to a contract, subcontract, or claim of $500,000 or more and—

"(A) engaged in repeated direct contact with the contractor or subcontractor on matters relating to such contract, subcontract, or claim; or

"(B) exercised significant ongoing decision-making responsibility with respect to the contractor or subcontractor on matters relating to such contract, subcontract, or claim,

shall knowingly accept or continue employment with such contractor or subcontractor for a period of 1 year following the individual's separation from service, except that such individual may accept or continue employment with any division or affiliate of such contractor or subcontractor that does not produce the same or similar products as the entity involved in the negotiation or performance of the contract or subcontract or the adjustment of the claim.

"(2) No contractor or subcontractor, or any officer, employee, agent, or consultant of such contractor or subcontractor shall knowingly offer, provide, or continue any employment for another person, if such contractor, subcontractor, officer, employee, agent, or consultant knows or should know that the acceptance of such employment is or would be in violation of paragraph (1).

"(3) The head of each Federal agency shall designate in writing as a 'covered position' under this section each of the following positions in that agency:

"(A) The position of source selection authority, member of a source selection evaluation board, or chief of a financial or technical evaluation team, or any other position, if the officer or employee in that position is likely personally to exercise substantial responsibility for ongoing discretionary functions in the evaluation of proposals or the selection of a source for a contract in excess of $500,000.

"(B) The position of procuring contracting officer, or any other position, if the officer or employee in that position is likely personally to exercise substantial responsibility for ongoing discretionary functions in the negotiation of a contract in excess of $500,000 or the negotiation or settlement of a claim in excess of $500,000.

"(C) The position of program executive officer, program manager, or deputy program manager, or any other position, if the officer or employee in that position is likely personally to exercise similar substantial responsibility for ongoing discretionary functions in the management or administration of a contract in excess of $500,000.

"(D) The position of administrative contracting officer, the position of an officer or employee assigned on a permanent basis to a Government Plant Representative's Office, the position of auditor, a quality assurance position, or any other position, if the officer or employee in that position is likely personally to exercise substantial responsibility for ongoing discretionary functions in the on-site oversight of a contractor's operations with respect to a contract in excess of $500,000.

"(E) A position in which the incumbent is likely personally to exercise substantial responsibility for ongoing discretionary functions in operational or developmental testing activities involving repeated direct contact with a contractor regarding a contract in excess of $500,000.".

(d) DISCLOSURE OF PROPRIETARY OR SOURCE SELECTION INFORMATION TO UNAUTHORIZED PERSONS.—Subsection (l) of such section is amended—

(1) by inserting "who are likely to be involved in contracts, modifications, or extensions in excess of $25,000" in the first sentence after "its procurement officials"; and

(2) by striking out "(e)" each place it appears and inserting in each such place "(f)".

(e) RULES OF CONSTRUCTION.—Subsection (n) of such section is amended to read as follows:

"(n) RULES OF CONSTRUCTION.—Nothing in this section shall be construed to—

"(1) authorize the withholding of any information from the Congress, any committee or

subcommittee thereof, a Federal agency, any board of contract appeals of a Federal agency, the Comptroller General, or an inspector general of a Federal agency;

"(2) restrict the disclosure of information to, or receipt of information by, any person or class of persons authorized, in accordance with applicable agency regulations or procedures, to receive that information;

"(3) restrict a contractor from disclosing its own proprietary information or the recipient of information so disclosed by a contractor from receiving such information; or

"(4) restrict the disclosure or receipt of information relating to a Federal agency procurement that has been canceled by the agency and that the contracting officer concerned determines in writing is not likely to be resumed.".

(f) TERM TO BE DEFINED IN REGULATIONS.—Subsection (o)(2)(A) of such section is amended—

(1) by inserting "money, gratuity, or other" before "thing of value'"; and

(2) by inserting before the semicolon "and such other exceptions as may be adopted on a Governmentwide basis under section 7353 of title 5, United States Code".

(g) TERMS DEFINED IN LAW.—Subsection (p) of such section is amended—

(1) in paragraph (1) by striking out "clauses (i)–(viii)" and inserting in lieu thereof "clauses (i) through (vii)";

(2) in paragraph (3)—

(A) in subparagraph (A)—

(i) by striking out clause (i);

(ii) by redesignating clauses (ii), (iii), (iv), (v), (vi), (vii), and (viii) as clauses (i), (ii), (iii), (iv), (v), (vi), and (vii), respectively; and

(iii) in clause (i) (as redesignated by subclause (II) of this clause), by striking out "review and approval of a specification" and inserting in lieu thereof "approval or issuance of a specification, acquisition plan, procurement request, or requisition"; and

(B) in subparagraph (B), by striking out all after "includes" and inserting in lieu thereof the following: "any individual acting on behalf of, or providing advice to, the agency with respect to any phase of the agency procurement concerned, regardless of whether such individual is a consultant, expert, or adviser, or an officer or employee of a contractor or subcontractor (other than a competing contractor)."; and

(3) in paragraph (6)(A), by inserting "nonpublic" before "information".

SEC. 6002. AMENDMENTS TO TITLE 18, UNITED STATES CODE.

Section 208(a) of title 18, United States Code, is amended—

(1) by inserting "(1)" before "Except as permitted"; and

(2) by adding at the end the following new paragraph:

"(2) Whoever knowingly aids, abets, counsels, commands, induces, or procures conduct prohibited by this section shall be subject to the penalties set forth in section 216 of this title.".

SEC. 6003. REPEAL OF SUPERSEDED AND OBSOLETE LAWS.

(a) REPEAL.—The following provisions of law are repealed:

(1) Sections 2207, 2397, 2397a, 2397b, and 2397c of title 10, United States Code.

(2) Section 281 of title 18, United States Code.

(3) Section 801 of title 37, United States Code.

(4) Part A of title VI of the Department of Energy Organization Act (42 U.S.C. 7211 through 7218).

(b) CLERICAL AMENDMENTS.—

(1) TITLE 10.—Part IV of subtitle A of title 10, United States Code, is amended—

(A) in the table of sections at the beginning of chapter 131, by striking out the item relating to section 2207; and

(B) in the table of sections for chapter 141, by striking out the items relating to sections 2397, 2397a, 2397b, and 2397c.

(2) TITLE 18.—The table of sections for chapter 15 of title 18, United States Code, is amended by striking out the item relating to section 281.

(3) TITLE 37.—The table of sections for chapter 15 of title 37, United States Code, is amended by striking out the item relating to section 801.

(4) DEPARTMENT OF ENERGY ORGANIZATION ACT.—The table of contents for the Department of Energy Organization Act is amended by striking out the matter relating to part A of title VI.

SEC. 6004. IMPLEMENTATION.

(a) REGULATIONS.—Not later than 180 days after the date of the enactment of this Act, regulations implementing the amendments made by section 6001 to section 27 of the Office of Federal Procurement Policy Act (41 U.S.C. 423), including definitions of the terms used in subsection (f) of such section, shall be issued in accordance with sections 6 and 25 of such Act (41 U.S.C. 405 and 521) after coordination with the Director of the Office of Government Ethics.

(b) SAVINGS PROVISIONS.—

(1) CONTRACTOR CERTIFICATIONS.—No officer, employee, agent, representative, or consultant of a contractor who has signed a certification under section 27(e)(1)(B) of the Office of Federal Procurement Policy Act (41 U.S.C. 423(e)(1)(B)) before the effective date of this Act shall be required to sign a new certification as a result of the enactment of this Act.

(2) FEDERAL PROCUREMENT OFFICIAL CERTIFICATIONS.—No procurement official of a Federal agency who has signed a certification under section 27(l) of the Office of Federal Procurement Policy Act (41 U.S.C. 423(l)) before the date of enactment of this Act shall be required to sign a new certification as a result of the enactment of this Act.

(c) INSPECTOR GENERAL REPORTS.—Not later than May 31 of each of the years 1995 through 1998, the Inspector General of each Federal agency (or, in the case of a Federal agency that does not have an Inspector General, the head of such agency) shall submit to Congress a report on the compliance by the agency during the preceding year with the requirement for the head of the agency to designate covered procurement positions under section 27(f)(3) of the Office of Federal Procurement Policy Act (as added by section 6001(c)).

Subtitle B—Additional Amendments

SEC. 6051. CONTRACTING FUNCTIONS PERFORMED BY FEDERAL PERSONNEL.

(a) AMENDMENT OF OFPP ACT.—The Office of Federal Procurement Policy Act, as amended by section 1092, is further amended by inserting after section 22 the following new section 23:

"CONTRACTING FUNCTIONS PERFORMED BY FEDERAL PERSONNEL

"SEC. 23. (a) LIMITATION ON PAYMENT FOR ADVISORY AND ASSISTANCE SERVICES.—(1) No person who is not a person described in subsection (b) may be paid by an agency for services to conduct evaluations or analyses of any aspect of a proposal submitted for an acquisition unless personnel described in subsection (b) with adequate training and capabilities to perform such evaluations and analyses are not readily available within the agency or another Federal agency, as determined in accordance with standards and procedures prescribed in the Federal Acquisition Regulation.

"(2) In the administration of this subsection, the head of each agency shall determine in accordance with the standards and procedures set forth in the Federal Acquisition Regulation whether—

"(A) a sufficient number of personnel described in subsection (b) within the agency or another Federal agency are readily available to perform a particular evaluation or analysis for the agency head making the determination; and

"(B) the readily available personnel have the training and capabilities necessary to perform the evaluation or analysis.

"(b) COVERED PERSONNEL.—For purposes of subsection (a), the personnel described in this subsection are as follows:

"(1) An employee, as defined in section 2105 of title 5, United States Code.

"(2) A member of the Armed Forces of the United States.

"(3) A person assigned to a Federal agency pursuant to subchapter VI of chapter 33 of title 5, United States Code.

"(c) RULE OF CONSTRUCTION.—Nothing in this section is intended to affect the relationship between the Federal Government and a federally funded research and development center.".

(b) REQUIREMENT FOR GUIDANCE AND REGULATIONS.—Not later than 90 days after the date of the enactment of this Act, the Federal Acquisition Regulatory Council established by section 25(a) of the Office of Federal Procurement Policy Act (41 U.S.C. 421(a)) shall—

(1) review part 37 of title 48 of the Code of Federal Regulations as it relates to the use of advisory and assistance services; and

(2) provide guidance and promulgate regulations regarding—

(A) what actions Federal agencies are required to take to determine whether expertise is readily available within the Federal Government before contracting for advisory and technical services to conduct acquisitions; and

(B) the manner in which personnel with expertise may be shared with agencies needing expertise for such acquisitions.

SEC. 6052. REPEAL OF EXECUTED REQUIREMENT FOR STUDY AND REPORT.

Section 17 of the Office of Federal Procurement Policy Act (41 U.S.C. 415) is repealed.

SEC. 6053. INTERESTS OF MEMBERS OF CONGRESS.

Section 3741 of the Revised Statutes (41 U.S.C. 22) is amended to read as follows:

"No member of Congress shall be admitted to any share or part of any contract or agreement made, entered into, or accepted by or on behalf of the United States, or to any benefit to arise thereupon.".

SEC. 6054. WAITING PERIOD FOR SIGNIFICANT CHANGES PROPOSED FOR ACQUISITION REGULATIONS.

Section 22(a) of the Office of Federal Procurement Policy Act (41 U.S.C. 418b) is amended—

(1) by striking out "30 days" and inserting in lieu thereof "60 days"; and

(2) by adding at the end the following: "Notwithstanding the preceding sentence, such a policy, regulation, procedure, or form may take effect earlier than 60 days after the publication date when there are compelling circumstances for the earlier effective date, but in no event may that effective date be less than 30 days after the publication date.".

Subtitle C—Whistleblower Protection

SEC. 6101. ARMED SERVICES PROCUREMENTS.

(a) WHISTLEBLOWER PROTECTIONS FOR CONTRACTOR EMPLOYEES.—Section 2409 of title 10, United States Code, is amended—

(1) by striking out subsection (d);

(2) by redesignating subsection (c) as subsection (d); and

(3) by inserting after subsection (b) the following new subsection (c):

"(c) REMEDY AND ENFORCEMENT AUTHORITY.—(1) If the Secretary of Defense determines that a defense contractor has subjected a person to a reprisal prohibited by subsection (a), the Secretary may take one or more of the following actions:

"(A) Order the defense contractor to take affirmative action to abate the reprisal.

"(B) Order the defense contractor to reinstate the person to the position that the person held before the reprisal, together with the compensation (including back pay), employment benefits, and other terms and conditions of employment that would apply to the person in that position if the reprisal had not been taken.

"(C) Order the defense contractor to pay the complainant an amount equal to the aggregate amount of all costs and expenses (including attorney's fees and expert witnesses' fees) that were reasonably incurred by the complainant for, or in connection with, bringing the complaint regarding the reprisal, as determined by the Secretary.

"(2) Whenever a person fails to comply with an order issued under paragraph (1), the Secretary shall file an action for enforcement of such order in the United States district court for a district in which the reprisal was found to have occurred. In any action brought under this paragraph, the court may grant appropriate relief, including injunctive relief and compensatory and exemplary damages.

"(3) Any person adversely affected or aggrieved by an order issued under paragraph (1) may obtain review of the order's conformance with this subsection, and any regulations issued to carry out this section, in the United States court of appeals for a circuit in which the reprisal is alleged in the order to have occurred. No petition seeking such review may be filed more than 60 days after issuance of the Secretary's order. Review shall conform to chapter 7 of title 5.".

(b) RELATED LAW.—

(1) REPEAL.—Section 2409a of title 10, United States Code, is repealed.

(2) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 141 of such title is amended by striking out the item relating to section 2409a.

SEC. 6102. GOVERNMENTWIDE WHISTLEBLOWER PROTECTIONS FOR CONTRACTOR EMPLOYEES.

The Office of Federal Procurement Policy Act (41 U.S.C. 401 et seq.), as amended by section 5091, is further amended by adding at the end the following new section:

"CONTRACTOR EMPLOYEES: PROTECTION FROM REPRISAL FOR DISCLOSURE OF CERTAIN INFORMATION

"SEC. 32. (a) PROHIBITION OF REPRISALS.—An employee of an executive agency contractor may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing to a Member of Congress or an authorized official of the agency or the Department of Justice information relating to a substantial violation of law related to an agency contract (including the competition for or negotiation of an agency contract).

"(b) INVESTIGATION OF COMPLAINTS.—A person who believes that the person has been subjected to a reprisal prohibited by subsection (a) may submit a complaint to the Inspector General of the executive agency. Unless the Inspector General determines that the complaint is frivolous, the Inspector General shall investigate the complaint and, upon completion of such investigation, submit a report of the findings of the investigation to the person, the contractor concerned, and the head of the agency. In the case of an executive agency that does not have an inspector general, the duties of the inspector general under this section shall be performed by an official designated by the agency head.

"(c) REMEDY AND ENFORCEMENT AUTHORITY.—(1) If the head of an executive agency determines that an agency contractor has subjected a person to a reprisal prohibited by subsection (a), the agency head may take one or more of the following actions:

"(A) Order the contractor to take affirmative action to abate the reprisal.

"(B) Order the contractor to reinstate the person to the position that the person held before the reprisal, together with the compensation (including back pay), employment benefits, and other terms and conditions of employment that would apply to the person in that position if the reprisal had not been taken.

"(C) Order the contractor to pay the complainant an amount equal to the aggregate amount of all costs and expenses (including attorney's fees and expert witnesses' fees) that were reasonably incurred by the complainant for, or in connection with, bringing the complaint regarding the reprisal, as determined by the Secretary.

"(2) Whenever a person fails to comply with an order issued under paragraph (1), the agency head shall file an action for enforcement of such order in the United States district court for a district in which the reprisal was found to have occurred. In any action brought under this paragraph, the court may grant appropriate relief, including injunctive relief and compensatory and exemplary damages.

"(3) Any person adversely affected or aggrieved by an order issued under paragraph (1) may obtain review of the order's conformance with this subsection, and any regulations issued to carry out this section, in the United States court of appeals for a circuit in which the reprisal is alleged in the order to have occurred. No petition seeking such review may be filed more than 60 days after issuance of the agency head's order. Review shall conform to chapter 7 of title 5, United States Code.

"(d) CONSTRUCTION.—Nothing in this section may be construed to authorize the discharge of, demotion of, or discrimination against an employee for a disclosure other than a disclosure protected by subsection (a) or to modify or derogate from a right or remedy otherwise available to the employee.

"(e) COORDINATION WITH OTHER LAW.—This section does not apply with respect to the Department of Defense. For the corresponding provision of law applicable to the Department of Defense, see section 2409 of title 10, United States Code.

"(f) DEFINITION.—In this section, the term 'Inspector General' means an Inspector General appointed under the Inspector General Act of 1978.".

TITLE VII—DEFENSE TRADE AND COOPERATION

SEC. 7001. PURCHASES OF FOREIGN GOODS.

(a) REPEAL OF EXECUTED REQUIREMENTS.—

(1) REQUIREMENT FOR POLICY GUIDANCE.—Title III of the Act of March 3, 1933 (41 U.S.C. 10a et seq.), commonly referred to as the "Buy American Act", is amended in section 4(g) (41 U.S.C. 10b–1(g)) by striking out paragraphs (2)(C) and (3).

(2) REPORTING REQUIREMENT.—Section 9096(b) of Public Law 102–396 (106 Stat. 1924; 41 U.S.C. 10b–2(b)) is repealed.

(b) REPEAL OF REDUNDANT PROVISION.—

(1) CONSIDERATION OF NATIONAL SECURITY OBJECTIVES.—Section 2327 of title 10, United States Code, is repealed.

(2) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 137 of such title is amended by striking out the item relating to section 2327.

SEC. 7002. INTERNATIONAL COOPERATIVE AGREEMENTS.

(a) TERMINOLOGY REVISIONS.—Section 2531 of title 10, United States Code, is amended—

(1) in the subsection captions for subsections (a) and (c), by striking out "MOUS AND RELATED" and inserting in lieu thereof "INTERNATIONAL";

(2) in subsection (a), by striking out "proposed memorandum of understanding, or any existing or proposed agreement related to a memorandum of understanding," in the matter above paragraph (1) and inserting in lieu thereof "proposed international agreement, including a memorandum of understanding,";

(3) by striking out "memorandum of understanding or related agreement" each place it appears and inserting in lieu thereof "international agreement";

(4) in subsection (b), by striking out "memorandum or related agreement" each place it appears in the second sentence and inserting in lieu thereof "international agreement"; and

(5) in subsection (c)—

(A) by striking out "A" after "AGREEMENTS.—" and inserting in lieu thereof "An"; and

(B) by striking out "memorandum or agreement" and inserting in lieu thereof "international agreement".

(b) EXPANDED SCOPE OF AGREEMENTS.—Section 2531(a) of title 10, United States Code, is amended by striking out "research, development, or production" in the matter above paragraph (1) and inserting in lieu thereof "research, development, production, or logistics support".

(c) CLERICAL AMENDMENTS.—

(1) SECTION HEADING.—The heading of section 2531 of title 10, United States Code, is amended to read as follows:

"§2531. Defense international agreements".

(2) TABLE OF SECTIONS.—The item relating to such section in the table of sections at the beginning of subchapter V of chapter 148 of such title is amended to read as follows:

"2531. Defense international agreements.".

SEC. 7003. ACQUISITION, CROSS-SERVICING AGREEMENTS, AND STANDARDIZATION.

(a) LIMITED WAIVER OF RESTRICTIONS ON ACCRUED REIMBURSABLE LIABILITIES AND CREDITS FOR CONTINGENCY OPERATIONS.—Section 2347 of title 10, United States Code, is amended by adding at the end the following new subsection:

"(c) The Secretary of Defense may waive the restrictions in subsections (a) and (b) for a period not to exceed 180 days upon a written determination that the armed forces are involved in a contingency operation or that involvement of the armed forces in a contingency operation is imminent. Upon making such a determination, the Secretary shall transmit a copy of the determination to the Committees on Armed Services of the Senate and House of Representatives.".

(b) COMMUNICATIONS SUPPORT.—Section 2350f of title 10, United States Code, is amended—

(1) by redesignating subsection (d) as subsection (e); and

(2) by inserting after subsection (c) the following new subsection:

"(d)(1) Nothing in this section shall be construed to limit the authority of the Secretary of Defense, without a formal bilateral agreement or multilateral arrangement, to furnish communications support and related supplies to, or receive communications support and related supplies from, an allied country in accordance with this subsection.

"(2) The Secretary of Defense may furnish or receive such support and supplies on a reciprocal basis for a period not to exceed 90 days—

"(A) in order to meet emerging operational requirements of the United States and the allied country; or

"(B) incident to a joint military exercise with the allied country.

"(3) If interconnection of communication circuits is maintained for joint or multilateral defense purposes under the authority of this subsection, the costs of maintaining such circuits may be allocated among the various users.".

TITLE VIII—COMMERCIAL ITEMS

SEC. 8001. DEFINITIONS.

Section 4 of the Office of Federal Procurement Policy Act (41 U.S.C. 403), as amended by section 4001(a), is further amended—

(1) by striking out "Act—"and inserting in lieu thereof "Act:";

(2) by capitalizing the initial letter in the first word of each paragraph;

(3) by striking out the semicolon at the end of each of paragraphs (1), (2), (3), (5), (6), (7), (8), and (9) and inserting in lieu thereof a period;

(4) in paragraphs (4) and (10), by striking out "; and" at the end and inserting in lieu thereof a period; and

(5) by adding at the end the following new paragraphs:

"(12) The term 'commercial item' means—

"(A) property, other than real property, that is of a type customarily used by the general public or by nongovernmental entities in the course of normal business operations for purposes other than governmental purposes and—

"(i) has been sold, leased, or licensed to the general public;

"(ii) has not been sold, leased, or licensed to the general public but has been offered for sale, lease, or license to the general public; or

"(iii) is not yet available in the commercial marketplace but will be made available for commercial delivery within a reasonable period;

"(B) any item that, but for—

"(i) modifications of a type customarily available in the commercial marketplace, or

"(ii) minor modifications made to meet Federal Government requirements,

would satisfy the criteria in subparagraph (A);

"(C) any combination of items meeting the requirements of subparagraph (A), (B), or (D) that are of a type customarily combined and sold in combination to the general public;

"(D) installation services, maintenance services, repair services, training services, and other services if such services are procured for support of an item referred to in subparagraph (A), (B), or (C) and if the source of such services—

"(i) offers such services to the general public and the Federal Government contemporaneously and under similar terms and conditions; and

"(ii) offers to use the same work force for providing the Federal Government with such services as the source uses for providing such services to the general public; and

"(E) any item, combination of items, or service referred to in subparagraph (A), (B), (C), or (D), regardless of whether the item, combination of items, or service is transferred between or among separate divisions, subsidiaries, or affiliates of a contractor.

"(13) The term 'nondevelopmental item' means—

"(A) any commercial item;

"(B) any previously developed item of supply that is in use by a department or agency of the United States, a State or local government, or a foreign government with which the United States has a mutual defense cooperation agreement;

"(C) any item of supply described in subparagraph (A) or (B) that requires only minor modification of the type normally available in the commercial marketplace in order to meet the requirements of the procuring department or agency; or

"(D) any item of supply currently being produced that does not meet the requirements of subparagraph (A), (B), or (C) solely because the item—

"(i) is not yet in use; or

"(ii) is not yet available in the commercial marketplace.

"(14) The term 'component' means any item supplied to the Federal Government as part of an end item or of another component.

"(15) The term 'commercial component' means any component that is a commercial item.".

SEC. 8002. PREFERENCE FOR ACQUISITION OF COMMERCIAL ITEMS AND NONDEVELOPMENTAL ITEMS.

(a) PREFERENCE REQUIRED.—The Office of Federal Procurement Policy Act (41 U.S.C. 401 et seq.), as amended by section 6102, is further amended by adding at the end the following new section:

"PREFERENCE FOR ACQUISITION OF COMMERCIAL ITEMS AND NONDEVELOPMENTAL ITEMS

"SEC. 33. (a) PREFERENCE.—The head of each executive agency shall ensure that, to the maximum extent practicable—

"(1) requirements of the executive agency with respect to a procurement of supplies are stated in terms of—

"(A) functions to be performed;

"(B) performance required; or

"(C) essential physical characteristics;

"(2) such requirements are defined so that commercial items or, to the extent that commercial items suitable to meet the agency's needs are not available, other nondevelopmental items may be procured to fulfill such requirements; and

"(3) offerors of commercial items and other nondevelopmental items are provided an opportunity to compete in any procurement to fill such requirements.

"(b) IMPLEMENTATION.—The head of each executive agency shall ensure that procurement officials in that executive agency, to the maximum extent practicable—

"(1) acquire commercial items or other nondevelopmental items to meet the needs of the executive agency;

"(2) require prime contractors and subcontractors at all levels under the executive agency contracts to incorporate commercial items or other nondevelopmental items as components of items supplied to the executive agency;

"(3) modify requirements in appropriate cases to ensure that the requirements can be met by commercial items or, to the extent that commercial items suitable to meet the agency's needs are not available, other nondevelopmental items;

"(4) state specifications in terms that enable and encourage bidders and offerors to supply commercial items or, to the extent that commercial items suitable to meet the agency's needs are not available, other nondevelopmental items in response to the executive agency solicitations;

"(5) revise the executive agency's procurement policies, practices, and procedures not required by law to reduce any impediments in those policies, practices, and procedures to the acquisition of commercial items; and

"(6) require training of appropriate personnel in the acquisition of commercial items.

"(c) PRELIMINARY MARKET RESEARCH.—(1) The head of an executive agency shall conduct market research appropriate to the circumstances—

"(A) before developing new specifications for a procurement by that executive agency; and

"(B) before soliciting bids or proposals for a contract in excess of the simplified acquisition threshold.

"(2) The head of an executive agency shall use the results of market research to determine whether there are commercial items or, to the extent that commercial items suitable to meet the agency's needs are not available, other nondevelopmental items available that—

"(A) meet the executive agency's requirements;

"(B) could be modified to meet the executive agency's requirements; or

"(C) could meet the executive agency's requirements if those requirements were modified to a reasonable extent.".

(b) REPEAL OF SUPERSEDED PROVISION.—

(1) SEPARATE STATEMENT OF PREFERENCE FOR DEPARTMENT OF DEFENSE.—Section 2325 of title 10, United States Code, is repealed.

(2) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 137 of such title is amended by striking out the item relating to section 2325.

SEC. 8003. ACQUISITION OF COMMERCIAL ITEMS.

(a) REQUIRED FAR PROVISIONS.—The Office of Federal Procurement Policy Act (41 U.S.C. 401 et seq.), as amended by section 8002, is further amended by adding at the end the following:

"FEDERAL ACQUISITION REGULATION PROVISIONS REGARDING ACQUISITIONS OF COMMERCIAL ITEMS AND COMPONENTS

"SEC. 34. (a) CONTRACT CLAUSES AND OTHER CLAUSES.—(1)(A) The Federal Acquisition Regulation shall include one or more sets of contract clauses containing the required terms and conditions for the acquisition of commercial items and commercial components by executive agencies and by contractors in the performance of contracts of executive agencies.

"(B) The contract clauses referred to in subparagraph (A) shall include only—

"(i) those clauses that are required to implement provisions of law applicable to acquisitions of commercial items or commercial components, as the case may be;

"(ii) those contract clauses that are essential for the protection of the Federal Government's interest in an acquisition of commercial items or commercial components, as the case may be; and

"(iii) those contract clauses that are determined to be consistent with standard commercial practice.

"(2) Subject to paragraph (3), the Federal Acquisition Regulation shall require that, to the maximum extent practicable, only the contract clauses referred to in paragraph (1) be used in a contract, or be required to be used in a subcontract, for the acquisition of commercial items or commercial components by or for an executive agency.

"(3) The Federal Acquisition Regulation shall provide that a contract or subcontract referred to in paragraph (2) may contain contract clauses other than the contract clauses referred to in that paragraph only if the other clauses are essential for the protection of the Federal Government's interest in—

"(A) that contract or subcontract, as determined in writing by the contracting officer for such contract; or

"(B) a class of contracts or subcontracts, as determined by the head of an agency concerned, unless the determination of that head of an agency is disapproved by the Administrator.

"(4) The Federal Acquisition Regulation shall provide standards and procedures for waiving the use of contract clauses required pursuant to paragraph (1), other than those required by law, including standards for determining the cases in which a waiver is appropriate.

"(b) MARKET ACCEPTANCE.—The Federal Acquisition Regulation shall provide that under appropriate conditions the head of an executive agency may require offerors to demonstrate that the items offered—

"(1) have either—

"(A) achieved commercial market acceptance; or

"(B) been satisfactorily supplied to an executive agency under current or recent contracts for the same or similar requirements; and

"(2) otherwise meet the item description, specifications, or other criteria prescribed in the public notice and solicitation relating to the contract.

"(c) USE OF FIRM, FIXED PRICE CONTRACTS.—The Federal Acquisition Regulation shall include a requirement that firm, fixed price contracts or fixed price with economic price adjustment contracts, be used, to the maximum extent

practicable, for the acquisition of commercial items.

"(d) CONTRACT QUALITY REQUIREMENTS.—The Federal Acquisition Regulation shall include provisions that—

"(1) permit, to the maximum extent practicable, a contractor under a commercial items acquisition to use the contractor's existing quality assurance system as a substitute for compliance with a requirement for the Federal Government to inspect or test the commercial items before the contractor's tender of those items for acceptance by the Federal Government;

"(2) require that, to the maximum extent practicable, an executive agency accept commercial warranties (including extended warranties) offered by offerors of commercial items to commercial customers and use such warranties for the repair and replacement of commercial items; and

"(3) set forth guidance to executive agencies regarding the use of past performance of items and sources as a factor in contract award decisions.".

"(e) TREATMENT OF TRANSFERS BETWEEN AFFILIATES.—The Federal Acquisition Regulation shall provide for a transfer of commercial items from one division, subsidiary, or affiliate of a contractor to another division, subsidiary, or affiliate of the contractor to be treated as a subcontract for purposes of section 35 of the Office of Federal Procurement Policy Act and the provisions of law amended by section 8005 of the Federal Acquisition Streamlining Act of 1994.".

(b) DEFENSE CONTRACT CLAUSES.—

(1) TERMINATION OF DOD AUTHORITY.—Section 824(b) of the National Defense Authorization Act for Fiscal Years 1990 and 1991 (Public Law 101–189; 10 U.S.C. 2325 note) shall cease to be effective on the date on which the regulations implementing section 34 of the Office of Federal Procurement Policy Act, as added by subsection (a), become effective.

(2) SAVINGS PROVISION.—Notwithstanding section 34(a) of the Office of Federal Procurement Policy Act (as added by subsection (a)), contracts of the Department of Defense entered into before the date on which section 824(b) ceases to be effective under paragraph (1), and subcontracts entered into before such date under such contracts, may include clauses developed pursuant to paragraphs (2) and (3) of section 824(b) of the National Defense Authorization Act for Fiscal Years 1990 and 1991 (Public Law 101–189; 10 U.S.C. 2325 note).

SEC. 8004. CLASS WAIVER OF APPLICABILITY OF CERTAIN LAWS.

The Office of Federal Procurement Policy Act (41 U.S.C. 401 et seq.), as amended by section 8003, is further amended by adding at the end the following:

"CLASS WAIVER OF APPLICABILITY OF CERTAIN LAWS TO ACQUISITIONS OF COMMERCIAL ITEMS

"SEC. 35. (a) IN GENERAL.—The applicability of a provision of law described in subsection (c) that is enacted after the date of the enactment of the Federal Acquisition Streamlining Act of 1994 to contracts for the acquisition of commercial items may be waived on a class basis in the Federal Acquisition Regulation. Such a waiver shall not apply to a provision of law that expressly refers to this section and prohibits the waiver of that provision of law.

"(b) WAIVER OF APPLICABILITY TO SUBCONTRACTS.—(1) The applicability of a provision of law described in subsection (c) to subcontracts under a contract for the acquisition of commercial items or a subcontract for the acquisition of commercial components may be waived on a class basis in the Federal Acquisition Regulation. Such a waiver shall not apply to a provision of law that expressly refers to this section and prohibits the waiver of that provision of law.

"(2) Nothing in this subsection shall be construed to authorize the waiver of the applicability of any provision of law with respect to—

"(A) any contract with a prime contractor; or

"(B) any subcontract under a contract with a prime contractor who does not substantially transform the commercial items supplied under the contract.

"(c) COVERED LAW.—A provision of law referred to in subsections (a) and (b) is any provision of law that, as determined by the Federal Acquisition Regulatory Council, sets forth policies, procedures, requirements, or restrictions for the procurement of property or services by the Federal Government.".

SEC. 8005. INAPPLICABILITY OF CERTAIN PROVISIONS OF LAW.

(a) ARMED SERVICES ACQUISITIONS.—

(1) PROHIBITION ON CONTINGENT FEES.—Section 2306(b) of title 10, United States Code, as amended by section 4022(a), is further amended by inserting before the period at the end of the sentence added by section 4022(a) the following: "or to a contract for the acquisition of commercial items".

(2) REQUIREMENT TO IDENTIFY SUPPLIERS AND SOURCES OF SUPPLIES.—Paragraph (2) of section 2384(b) of title 10, United States Code, is amended to read as follows:

"(2) The regulations prescribed pursuant to paragraph (1) do not apply to a contract that requires the delivery of supplies that are commercial items, as defined in section 2302 of this title.".

(3) PROHIBITION AGAINST DOING BUSINESS WITH CERTAIN OFFERORS OR CONTRACTORS.—Section 2393(d) of title 10, United States Code, as amended by section 4022(e), is further amended by adding at the end the following: "The requirement shall not apply in the case of a subcontract for the acquisition of commercial items (as defined in section 4(12) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(12))).".

(4) PROHIBITION ON LIMITATION OF SUBCONTRACTOR DIRECT SALES.—Section 2402 of title 10, United States Code, as amended by section 4022(b), is further amended by adding at the end the following new subsection:

"(d)(1) An agreement between the contractor in a contract for the acquisition of commercial items and a subcontractor under such contract that restricts sales by such subcontractor directly to persons other than the contractor may not be considered to unreasonably restrict sales by that subcontractor to the United States in violation of the provision included in such contract pursuant to subsection (a) if the agreement does not result in the Federal Government being treated differently with regard to the restriction than any other prospective purchaser of such commercial items from that subcontractor.

"(2) In paragraph (1), the term 'commercial item' has the meaning given such term in section 4(12) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(12)).".

(5) CONTRACTOR INVENTORY ACCOUNTING SYSTEMS: STANDARDS.—Section 2410b of title 10, United States Code, is amended—

(A) by inserting "(a) REGULATIONS REQUIRED.—" before "The Secretary of Defense"; and

(B) by adding at the end the following new subsection:

"(b) INAPPLICABILITY TO ACQUISITIONS OF COMMERCIAL ITEMS.—The regulations prescribed pursuant to subsection (a) need not apply to a contract for the acquisition of commercial items (as defined in section 4(12) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(12))).".

(6) PROHIBITION ON PERSONS CONVICTED OF DEFENSE-CONTRACT RELATED FELONIES.—Paragraph (4) of section 2408(a) of title 10, United States Code, as added by section 4022(f), is amended—

(A) by inserting after subparagraph (A) the following:

"(B) A contract referred to in such subparagraph that is for the acquisition of commercial items (as defined in section 4(12) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(12))).'; and

(B) by inserting "or (B)" before the period at the end of subparagraph (C).

(b) CIVILIAN AGENCY ACQUISITIONS.—

(1) RESTRICTIONS ON SUBCONTRACTOR SALES TO THE UNITED STATES.—Section 303G of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253g), as amended by section 4023(b), is further amended by adding at the end the following new subsection:

"(d) An agreement between the contractor in a contract for the acquisition of commercial items and a subcontractor under such contract that restricts sales by such subcontractor directly to persons other than the contractor may not be considered to unreasonably restrict sales by that subcontractor to the United States in violation of the provision included in such contract pursuant to subsection (a) if the agreement does not result in the Federal Government being treated differently with regard to the restriction than any other prospective purchaser of such commercial items from that subcontractor.".

(2) PROHIBITION ON CONTINGENT FEES.—Section 304(a) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 254(a)), as amended by section 4023(a) is further amended by inserting before the period at the end of the sentence added by section 4041 the following: "or to a contract for the acquisition of commercial items".

(c) ACQUISITIONS GENERALLY.—

(1) FEDERAL WATER POLLUTION CONTROL ACT.—Section 508 of the Federal Water Pollution Control Act (33 U.S.C. 1368) is amended by adding at the end the following new subsection:

"(f)(1) No certification by a contractor, and no contract clause, may be required in the case of a contract for the acquisition of commercial items in order to implement a prohibition or requirement of this section or a prohibition or requirement issued in the implementation of this section.

"(2) In paragraph (1), the term 'commercial item' has the meaning given such term in section 4(12) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(12)).".

(2) CONTRACT WORK HOURS AND SAFETY STANDARDS ACT.—The Contract Work Hours and Safety Standards Act (title I of the Work Hours and Safety Act of 1962 (40 U.S.C. 327 et seq.)) is amended by adding at the end the following new section:

"SEC. 108. (a) No certification by a contractor, and no contract clause, may be required in the case of a contract for the acquisition of commercial items in order to implement a prohibition or requirement in this title.

"(b) in subsection (a), the term 'commercial item' has the meaning given such term in section 4(12) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(12)).".

(3) OFFICE OF FEDERAL PROCUREMENT POLICY ACT REQUIREMENT RELATING TO PROCUREMENT INTEGRITY CERTIFICATIONS.—Section 27(e)(7) of the Office of Federal Procurement Policy Act (41 U.S.C. 423) is amended by adding at the end the following new subparagraph:

"(C) This subsection does not apply to a contract for the acquisition of commercial items.".

(4) CERTAIN PROVISIONS OF THE ANTI-KICKBACK ACT OF 1986.—

(A) REQUIREMENT FOR CONTRACT CLAUSE.—Section 7 of the Anti-Kickback Act of 1986 (41 U.S.C. 57), as amended by section 4024(b), is further amended by inserting before the period at

the end of subsection (d) the following: "or to a prime contract for the acquisition of commercial items (as defined in section 4(12) of such Act (41 U.S.C. 403(12))).".

(B) INSPECTION AUTHORITY.—Section 8 of such Act (41 U.S.C. 58) is amended by adding at the end the following: "This section does not apply with respect to a prime contract for the acquisition of commercial items (as defined in section 4(12) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(12))).".

(5) DRUG-FREE WORKPLACE ACT OF 1988.—Section 5152(a)(1) of the Drug-Free Workplace Act of 1988 (subtitle D of title V of Public Law 100–690; 41 U.S.C. 701(a)(1)), as amended by section 4024(e), is further amended by inserting after the matter inserted by such section 4024(e) the following: ", other than a contract for the procurement of commercial items (as defined in section 4(12) of such Act (41 U.S.C. 403(12))),".

(6) CLEAN AIR ACT.—Section 306 of the Clean Air Act (42 U.S.C. 7606) is amended by adding at the end the following new subsection:

"(f)(1) No certification by a contractor, and no contract clause, may be required in the case of a contract for the acquisition of commercial items in order to implement a prohibition or requirement of this section or a prohibition or requirement issued in the implementation of this section.

"(2) In paragraph (1), the term 'commercial item' has the meaning given such term in section 4(12) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(12)).".

(7) FLY AMERICAN REQUIREMENTS.—Section 1117 of the Federal Aviation Act of 1958 (49 U.S.C. App. 1517) is amended by adding at the end the following new subsection:

"(e)(1) No certification by a contractor, and no contract clause, may be required in the case of a contract for the transportation of commercial items in order to implement a requirement in this section.

"(2) In paragraph (1), the term 'commercial item' has the meaning given such term in section 4(12) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(12)).".

SEC. 8006. FLEXIBLE DEADLINES FOR SUBMISSION OF OFFERS OF COMMERCIAL ITEMS.

Section 18(a) of the Office of Federal Procurement Policy Act (41 U.S.C. 416(a)) is amended by adding at the end the following new paragraph:

"(4) The requirements of paragraph (3)(B) do not apply to contracts for the purchase of commercial items. The Administrator shall prescribe for such contracts appropriate limits on the applicability of a deadline for submission of bids or proposals that is required by subsection (a)(1). Such limits shall be incorporated in the Federal Acquisition Regulation.".

SEC. 8007. ADVOCATES FOR ACQUISITION OF COMMERCIAL AND NONDEVELOPMENTAL ITEMS.

(a) RESPONSIBILITIES OF THE ADVOCATE FOR COMPETITION.—Section 20(c) of the Office of Federal Procurement Policy Act (41 U.S.C. 418(c)) is amended to read as follows:

"(c) The advocate for competition for each procuring activity shall be responsible for promoting full and open competition, promoting the acquisition of commercial items and other nondevelopmental items, and challenging barriers to such acquisition, including such barriers as unnecessarily restrictive statements of need, unnecessarily detailed specifications, and unnecessarily burdensome contract clauses.".

(b) REPEAL OF SUPERSEDED PROVISION.—Section 28 of such Act (41 U.S.C. 424) is repealed.

SEC. 8008. PROVISIONS NOT AFFECTED.

Nothing in this title shall be construed as amending, modifying, or superseding, or as intended to impair or restrict authorities or responsibilities under—

(1) section 111 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 759), popularly referred to as the "Brooks Automatic Data Processing Act";

(2) title IX of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 541 et seq.), popularly referred to as the "Brooks Architect-Engineers Act";

(3) section 8(a) of the Small Business Act (15 U.S.C. 637(a)) or any other provision of that Act; or

(4) the Act of June 25, 1938 (41 U.S.C. 46–48c), that was revised and reenacted in the Act of June 23, 1971 (85 Stat. 77), popularly referred to as the "Javits-Wagner-O'Day Act".

SEC. 8009. COMPTROLLER GENERAL REVIEW OF FEDERAL GOVERNMENT USE OF MARKET RESEARCH.

(a) REPORT REQUIRED.—Not later than 2 years after the date of the enactment of this Act, the Comptroller General of the United States shall submit to the Congress a report on the use of market research by the Federal Government in support of the procurement of commercial items and nondevelopmental items.

(b) CONTENT OF REPORT.—The report shall include the following:

(1) A review of existing Federal Government market research efforts to gather data concerning commercial and other nondevelopmental items.

(2) A review of the feasibility of creating a Government-wide data base for storing, retrieving, and analyzing market data, including use of existing Federal Government resources.

(3) Any recommendations for changes in law or regulations that the Comptroller General considers appropriate.

TITLE IX—EFFECTIVE DATES AND IMPLEMENTATION

SEC. 9001. EFFECTIVE DATES.

(a) EFFECTIVE DATE OF ACT.—Except as otherwise provided in this Act, this Act shall take effect on the date of the enactment of this Act.

(b) EFFECTIVE DATE OF AMENDMENTS.—Except as otherwise provided in this Act, the amendments made by this Act shall take effect on the date on which final implementing regulations are prescribed in accordance with section 9002.

SEC. 9002. IMPLEMENTING REGULATIONS.

(a) PROPOSED CHANGES.—Proposed changes to the Federal Acquisition Regulation and such other proposed regulations (or changes to existing regulations) as may be necessary to implement this Act shall be published in the Federal Register not later than 210 days after the date of the enactment of this Act.

(b) PUBLIC COMMENT.—The proposed regulations described in subsection (a) shall be made available for public comment for a period of not less than 60 days.

(c) FINAL REGULATIONS.—Final regulations shall be published in the Federal Register not later than 330 days after the date of enactment of this Act.

(d) APPLICABILITY.—(1) The amendments made by this Act shall apply, in the manner prescribed in such final regulations, to any solicitation that is issued or any unsolicited proposal that is received on or after the date described in paragraph (3).

(2) The amendments made by this Act shall apply, to the extent and in the manner prescribed in such final regulations, to any matter related to—

(A) a contract that is in effect on the date described in paragraph (3);

(B) an offer under consideration on the date described in paragraph (3); or

(C) any other proceeding or action that is ongoing on the date described in paragraph (3).

(3) The date referred to in paragraphs (1) and (2) is the date specified in such regulations, which—

(A) shall not be earlier than the end of the 30-day period that begins on the date the regulations required by subsection (c) are published; and

(B) shall not be later than October 1, 1995.

(e) SAVINGS PROVISION.—Nothing in this Act shall be construed to affect the validity of any action taken or any contract entered into prior to the date specified in the regulations pursuant to subsection (d)(3) except to the extent and in the manner prescribed in such regulations.

SEC. 9003. EVALUATION BY THE COMPTROLLER GENERAL.

(a) EVALUATION RELATING TO ISSUANCE OF REGULATIONS.—Not later than December 1, 1995, the Comptroller General shall submit to the committees referred to in subsection (c) a report evaluating compliance with the requirements in section 9002, relating to the issuance of implementing regulations.

(b) EVALUATION OF IMPLEMENTATION OF REGULATIONS.—Not later than December 1, 1996, the Comptroller General shall submit to the committees referred to in subsection (c) a report evaluating the effectiveness of the regulations implementing this Act in streamlining the acquisition system and fulfilling the other purposes of this Act.

(c) COMMITTEES DESIGNATED TO RECEIVE THE REPORTS.—The Comptroller General shall submit the reports required by this section to the Committees on Armed Services and on Governmental Affairs of the Senate and the Committees on Small Business on Government Operations of the House of Representatives.

SEC. 9004. DATA COLLECTION THROUGH THE FEDERAL PROCUREMENT DATA SYSTEM.

(a) DATA COLLECTION REQUIRED.—The Federal Procurement Data System described in section 6(d)(4)(A) of the Office of Federal Procurement Policy Act (41 U.S.C. 405(d)(4)(A)) shall be modified to collect from contracts in excess of the simplified acquisition threshold data pertaining to the following matters:

(1) Contract awards made pursuant to competitions conducted pursuant to section 2323 of title 10, United States Code, or section 8(c) of the Small Business Act (15 U.S.C. 637(c)).

(2) Awards to business concerns owned and controlled by women.

(3) Number of offers received in response to a solicitation.

(4) Task order contracts.

(5) Contracts for the acquisition of commercial items.

(b) DEFINITION.—In this section, the term "simplified acquisition threshold" has the meaning given such term in section 4 of the Office of Federal Procurement Policy Act (41 U.S.C. 403).

The Senate proceeded to consider the bill.

Mr. LEVIN addressed the Chair.

The PRESIDING OFFICER. The Senator from Michigan, Mr. LEVIN, is recognized.

PRIVILEGE OF THE FLOOR

Mr. LEVIN. Mr. President, at this time I ask unanimous consent that John Brosnan, Paul Lieberman, and Peter Wade be extended full floor privileges for the duration of the Senate debate on S. 1587.

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

Mr. LEVIN. Mr. President, the Senate today begins consideration of S. 1587, the Federal Acquisition Streamlining Act of 1994, which is the most significant procurement reform legislation to be considered by the Senate

since the Competition in Contracting Act 10 years ago which Senator COHEN and I and others introduced.

The pending bill before the Senate now was introduced on October 26 last year with Senators GLENN, BINGAMAN, NUNN, BUMPERS, and myself as original cosponsors. But that was just the beginning of the process. Over the last 6 months, the Governmental Affairs Committee and the Armed Services Committee have held three joint hearings on the bill and have solicited comments from the administration, the contracting community, and other interested parties. Our staffs have met almost constantly throughout this period working out modifications to improve the bill and ensure that it achieves its underlying purpose of streamlining the Federal acquisition system.

The bill is 300 pages long and would amend roughly 200 separate procurement-related provisions of the United States Code. With the exception of a few obsolete provisions, every one of these statutes serves some valid purpose.

We have competition requirements to ensure that we obtain low prices, avoid favoritism and conflict of interest, and provide everybody a fair chance to compete for Government contracts. We have audit requirements and cost principles to ensure that we get what we pay for under cost-type contracts. We have socioeconomic requirements to promote desirable social objectives, like promoting small minority businesses. We have ethics requirements to ensure that our procurement officials do not engage in employment discussions with contractors with whom they are negotiating contracts or show favoritism by giving inside information to contractors.

However, when all of our contract laws and hundreds more requirements that are imposed by regulation are added together, the result is an almost impossibly complex and unwieldy system for people who want to do business with the Federal Government. There is much that we can do and should do to streamline this system and make it less expensive and easier for the Government to buy the products and services we need without sacrificing the important objectives served by the procurement laws.

This bill seeks to do that. It would revise, simplify, and harmonize the hundreds of overlapping and confusing statutes that provide the basic guidelines for our acquisition system. It would eliminate outdated law, remove unnecessary statutory impediments to efficient and expeditious acquisition, and provide much needed consistency with the Civilian Procurement Code and Defense Procurement Code. This is the grunt work of reinventing Government.

I am particularly proud of title VIII of the bill, which would make it easier for the Government to buy commercial products instead of requiring products to be designed to Government-unique specifications. I have been fighting for this goal for years—holding three subcommittee hearings, issuing two committee reports, and I offered two successful amendments to DOD authorization bills, and introduced two bills to extend these reforms Governmentwide.

I first became interested in the commercial products issue in the mid-1980's, when the Packard Commission reported that DOD was wasting billions of dollars by relying on excessively rigid military specifications and developing custom-made items when readily available, off-the-shelf products could meet its needs at a fraction of the price. At that time, for example, the Packard Commission reported that the Pentagon was buying specially designed microchips at prices 3 to 10 times the market prices for similar, commercial products.

In response to the Packard report, I pressed the DOD to reduce paperwork requirements and rely more on commercially available microchips—with savings to the taxpayer that have been estimated at $500 million a year. This is just on microchips just by the DOD. At the same time, I offered a successful amendment to the DOD authorization bill to implement the broader recommendations of the Packard report by creating a statutory preference for off-the-shelf items and requiring the Pentagon to simplify its specifications and make it easier for commercial contractors to do business with the Government.

Mr. President, unfortunately, changing the procurement culture is never quite so easy. In 1989, the Governmental Affairs Subcommittee, which I Chair, revisited the issue with 2 days of hearings on the progress that the Department of Defense had made in implementing our previous efforts in commercial products reform. What we found was not a pretty picture. Although the Pentagon continued to give lip service to commercial products initiatives, the Department had actually cut its budget and staffing levels in the commercial products area to the point where it had only one part-time person even working on the program. Promised workshops for the training of acquisition personnel were never conducted. A system for tracking the acquisition of commercial products was never developed. Necessary regulatory changes were never made. And a draft manual on commercial acquisitions sat on the shelf for more than 2 years without ever being issued.

More important, officials at the Pentagon made virtually no headway in the effort to tailor tens of thousands of detailed military specifications to the commercial marketplace. In one case identified at our hearings, the Department reviewed a 37-page military specification for residential heat pumps and managed to shorten it to 36 pages. That is all they were able to accomplish—a 1-page reduction in 37 pages of specifications for a heat pump, which is available in the commercial marketplace.

What we also found was that the Department was discouraging commercial companies from bidding on its contracts by including numerous burdensome and unnecessary contract clauses. One witness at our hearings held up a half-inch thick package of contract terms and conditions that the Department asked his company to sign in connection with a $400 purchase of commercial equipment. Naturally, his company refused to bid on that contract.

In response to these problems, I introduced a 1989 amendment to the Department of Defense Authorization Act, which required the Pentagon to simplify its specifications, eliminate unnecessary contract clauses, take advantage of commercial quality control systems and commercial warranties, reduce burdensome "cost or pricing data" requirements imposed on commercial contractors, and report to Congress on any additional steps that needed to be taken to remove impediments to the increased acquisition of commercial products.

The savings from this initiative have been significant. For example, a 1991 study by the Logistics Management Institute found that a single Navy command had been able to save the following amounts of money: $5 million by substituting commercial standards for government-unique specifications for thermal insulation material; $3.7 million by purchasing general purpose automobiles with standard commercial paint, instead of requiring that all vehicles be painted medium Navy gray; $5 million by purchasing commercially-available fire and rescue trucks instead of custom-designed vehicles; $1 million saved by buying commercially-available generators and floodlights, instead of specially-designed, DOD-unique floodlights and generators.

Much more remains to be done, however. Over the last two Congresses, for example, I have introduced bills to make these reforms Governmentwide. Each of the bills were approved by both the Senate and the House; but in each case the House action came in the final hours of the session when it was too late to conference the measures.

Mr. President, as I explained when I first introduced this legislation 5 years ago, it only makes sense that commercial items and other off-the-shelf products are less expensive and easier to purchase than new, Government-unique items. The acquisition of commercial products can lower initial purchase costs by reducing or eliminating the need for research and development.

Acquisition lead time can be reduced since commercial products are readily available and can be produced on existing production lines. Because the product is already developed and has been shown to work, the need for detailed design specifications and extensive testing is also reduced.

I am pleased that title VIII of the bill—the commercial products title—incorporates these major elements and much of the language of our earlier commercial products bills.

Title VIII would, like those earlier bills, establish new Governmentwide definitions of commercial items and other off-the-shelf products; it would create a preference for the acquisition of such items; it would require Federal agencies to use simplified procurement specifications to the maximum extent possible; it would require agencies to conduct market research to determine whether their needs could be met by commercial and off-the-shelf products; it would require the use of uniform, simplified contracts for the purchase of commercial items; it will authorize the use of market acceptance criteria in commercial procurement; it will encourage the consideration of contractors' past performance in decisions to award future contracts; it will permit commercial contractors to use existing quality assurance systems instead of extensive Government testing; and it will require Federal agencies to take advantage of commercial warranties.

In addition to those measures, the bill will take two other very significant steps—recommended by both the Vice President's National Performance Review and the Section 800 panel—which will simplify the acquisition of commercial products.

First, the bill will authorize the executive branch to waive a number of Government-unique statutory requirements that have no parallel in the commercial marketplace. These requirements create an impediment to the purchase of commercial items, because they require commercial companies to make extensive changes to their business operations if they choose to sell to the Government.

Second, the bill would modify the Truth in Negotiations Act to permit contracting officers to waive its applicability to the acquisition of commercial items in appropriate cases. This means that commercial companies would not be subject to the requirement to produce extensive cost or pricing data to justify the prices that they charge for their commercial products. This data requirement creates an unneeded paperwork burden in cases where fair prices have already been reached through competition in the commercial marketplace.

This exception is to be exercised if the contracting officer determines in his or her discretion, and in accordance with standards and procedures set forth in the Federal Acquisition Regulation, that he or she has been able to obtain adequate information to evaluate the reasonableness of the contract price without the need for cost or pricing data. Under this provision, the contracting officer is required to obtain from offeror or contractor, or, where necessary, from other sources, "information on prices at which the same or similar items have been sold in the commercial market that is adequate for evaluating the reasonableness of the price of the contract or subcontract."

This provision leaves some discretion to the regulation writers in the executive branch and the contracting officer as to what types of information are "adequate for evaluating the reasonableness" of price. The intent of the provision is that contracting officers should seek out the best information that is available under the circumstances.

For instance, if information is available on prices at which the same contractor has previously sold the same item, the contracting officer should seek appropriate information on such prices. If no such information is available, the contracting officer may need to seek, instead, information on prices at which the contractor has previously sold similar items. If that information is not available either, it may be appropriate, in some cases, for the contracting officer to rely instead on information on prices at which other contractors have sold similar items.

Information requests under this provision should be tailored to impose the minimum necessary burden on contractors, and need not be as extensive as the sales data required by current regulations. Wherever possible, contracting officers should also review available data on market prices to help judge the reasonableness of the contractor's price.

However, this provision is not intended to authorize contracting officers to rely on information about prices charged for different items by different contractors without also obtaining appropriate and available information on prices charged for the same item by the same contractor.

Mr. President, the Federal Acquisition Streamlining Act, the act which is before us for consideration, is the product of many months of work. Starting at the beginning of this Congress, the majority and minority staffs of the Senate Governmental Affairs, Armed Services, and Small Business Committees met on a weekly basis for more than 6 months to review the acquisition laws on a line-by-line basis to determine where these laws could be streamlined, simplified, or reformed.

This bill will implement a number of important reforms. For example:

It will establish a new simplified acquisition threshold of $100,000, as recommended by the Vice President's National Performance Review and the Section 800 Panel;

It will raise the threshold on a number of other procurement-related provisions to $100,000, as recommended by the Vice President's National Performance Review and the Section 800 Panel;

It will authorize the use of umbrella contracts, subject to time and dollar limitations and specific competition requirements;

It will streamline and consolidate the procurement ethics laws, while retaining needed safeguards;

It will amend the Federal Property Act to codify the definitions and requirements of the Truth in Negotiations Act for civilian agencies;

It will raise the threshold for cost or pricing data to $500,000 on a permanent basis for the Department of Defense and civilian agencies;

It will amend the Federal Property Act to establish contract cost principles for civilian agencies identical to those already in effect for the Department of Defense;

It will establish a new, accelerated schedule for notice of contract award, contractor debriefings, and bid protests;

It will require contractor debriefings when requested by a disappointed bidder;

It will authorize the payment of consultant and expert witness fees in bid protests, in addition to attorney's fees, while limiting all such fees to the levels established in the Equal Access to Justice Act;

It will amend the provisions applicable to bid protests to the GAO to address questions that have been raised about the constitutionality of existing law;

It will address frivolous or bad-faith protests by authorizing the dismissal of such protests and the use of sanctions in appropriate cases;

It will clarify GSBCA protest jurisdiction and procedures, as proposed by Senator GLENN in a series of bills introduced in the last two Congresses.

Of course, past experience has shown that passing laws is not enough to change the way the acquisition system works. The executive branch has to implement fully and effectively not only the letter but also the spirit of the new law.

Should this bill pass the Senate and the House and be signed by the President, I sincerely hope that 2 or 3 years from now when we review its implementation, we will find that the bill has been implemented in the spirit in which it was written, and that real reform has occurred. That will be the true test of our success.

Mr. President, this bill is the product of a true collaborative effort among three Senate committees and between Democrats and Republicans. It could not have been brought to this point

without the commitment of Senators GLENN, NUNN, and BUMPERS, who have wholeheartedly embraced the goal of acquisition streamlining and made the staffs of their respective committees available to work on this project over a period of many months.

It would not have been possible without the efforts of Senator BINGAMAN, who initiated the Section 800 review of the defense acquisition laws and pushed us all to give the panel's report the attention it deserved.

And it would not have been possible without the support and cooperation of the ranking Republican members of the Governmental Affairs and the Armed Services Committees and the subcommittees of jurisdiction—Senators ROTH, COHEN, THURMOND, and SMITH.

I also commend the unsung heroes of this effort—The Senate staffers who have put in the endless hours of work necessary to put this bill together. Those staffers include Peter Levine, Linda Gustitus, and Roger Martino of my staff; Tom Sisti, John Brosnan, Mark Foreman, Paul Lieberman, Paul Brubaker, and Peter Wade of the Governmental Affairs Committee staff; Andy Effron, Jon Etherton, Don Deline, and John Douglas of the Armed Services Committee staff; Bill Montalto of the Small Business Committee staff; and Mike Hammond of Senator BINGAMAN's staff. Without their efforts, there would be no acquisition streamlining bill at all.

The Federal Acquisition Streamlining Act is an important piece of reinventing government. I hope our colleagues will join us in supporting this far-reaching measure.

Again, let me say in concluding that this is truly a bipartisan effort. I know of few bills that have had greater participation by both Republicans and Democrats on a common cause.

Our good friend from Delaware has been active in trying to streamline acquisition laws for as long as I have been in the Senate. And he has had some successes. But this will be one of the crowning achievements of all our efforts if we are able to pass this law.

I want all to know that the hard work of Senator ROTH and others on both sides of the aisle has gotten us to this point and will get us over the finish line.

I yield the floor.

The PRESIDING OFFICER (Ms. MOSELEY-BRAUN). The Senator from Delaware [Mr. ROTH].

Mr. ROTH. Madam President, first let me thank the distinguished Senator from Michigan and also congratulate him for his very significant contributions to what is truly a bipartisan effort to bring some sense out of this mishmash that now regulates and controls Government procurement.

As he has so eloquently said, for the last 6 months, members of the Governmental Affairs Committee as well as the Armed Services Committee have worked together, both Democrats and Republicans, in an effort to bring about reform that will bring better procurement for the services, as well as better purchases for the taxpayers' dollar.

Madam President, today's Federal buying system is not in good condition. Multi-billion-dollar cost overruns; programs that are years or even a decade behind schedule; incentives that encourage spending rather than savings; and top-heavy bureaucratic agencies that rely on detailed regulations rather than good judgment; these are the features that come to mind when one thinks of the Federal Government's buying system. It is disconcerting when, almost weekly, the network news magazines reveal a new horror story. Ironically, despite these problems, program managers are promoted to general, admiral, and senior executive service jobs after the programs they managed experience billion-dollar cost overruns.

The GAO's 1993 high risk series of reports noted that the Federal buying system itself perpetuates waste, fraud, and abuse. The Government has trouble purchasing modern technologies that you and I can buy at the local Wal-Mart or Kmart. Defense Department studies find that it takes 16 years and more than 840 steps to bring a technology to the battlefield. By then the technologies are out of date. Acquisition costs for Navy major weapon systems are over budget by as much as 179 percent, Air Force systems by as much as 220 percent, even after accounting for the effects of inflation and changes in quantity. A July 1993 Defense Science Board found that: "without fundamental reform, DOD will be unable to afford the weapons, equipment, and services it needs to provide for our national security."

The problems arise, Madam President, because the buying system provides the wrong incentives and is administered by top-heavy bureaucratic agencies that rely on a complicated web of regulations. As part of its testimony on the Federal Acquisition Streamlining Act, I asked the General Accounting Office to give me a report on its recent investigations of procurement horror stories. The GAO found it had produced more than 150 such reports and testimonies over the last 5 years.

These include such findings as the $1 billion cost increase that resulted from management problems in the Army's Javelin antitank missile. In another audit, the GAO identified NASA contract management actions that caused a weather satellite to fall 3 years behind schedule while costs doubled to $1.7 billion.

The GAO report identified problems in the way agencies determine their needs; poorly administered contracts; cost, schedule, and performance problems; funding and budgeting problems; and weaknesses in the acquisition workforce. The GAO report underscores the need for comprehensive reform.

In today's business terminology, the buying system needs to be re-engineered to focus on results. Moreover, we must reinstate accountability.

Some claim that waiving laws for buying commercial items and small purchases is sufficient. But, as the General Accounting Office testified, such reforms would affect less than 10 percent of Federal spending on goods and services, and the Congressional Budget Office said it would not generate scorable savings. Some proponents say that they want the Federal Government to be a world class buyer. But, many of their proposals would make the Government a world-class sucker.

They say that this would be the best Congress could do. I strongly disagree.

Madam President, you cannot use Tonka Toys to pave a bumpy road. Congress must be bold if it is to make significant improvements in the Government's buying system—a system I have worked for more than a decade to reform. Over the years my conclusion has not changed: without major cultural and structural change, Americans will not get the results they deserve.

Cost and schedule overruns will continue, the Government will pay more than it should for goods and services; and the taxpayer will pickup the inflated tab.

Real procurement reform must be comprehensive. It must hold Government employees and contractors accountable for results. It must remove impediments to efficiency, such as the maze of specifications and regulations that hinder the purchase of commercial items. It must reward those who produce and penalize those who do not.

Madam President, the original version of the Federal Acquisition Streamlining Act was insufficient. Senator COHEN and I fought for comprehensive legislation. Last October, Senator COHEN and I introduced a bill to accomplish the needed reforms in the Defense buying system. Witnesses from the administration, General Accounting Office, Defense Inspector General, industry and private watch dog groups testified on the value the Roth-Cohen proposal.

Based on that testimony, Senator COHEN and I introduced the Federal Acquisition Management Improvement Act of 1994 (S. 1982) which is a Government-wide, comprehensive reform bill.

I am pleased to report that the procurement reform bill before the Senate now contains major reforms, largely because of the cooperation of Senators GLENN, THURMOND, NUNN, LEVIN, and BINGAMAN. During the drafting of the committee substitute, the Federal Acquisition Management Improvement Act was reviewed and all but two of the

Roth-Cohen proposals were incorporated.

In a nutshell, the bill makes it easier for the Government to rely on the commercial marketplace to develop and refine items it needs. It provides a strong financial incentive for Government employees to save time and money. It makes both the acquisition workforce and contractors accountable for performing within schedule and budget guidelines.

I want to highlight several key provisions in the bill before the Senate today. First, the bill establishes a top-level measure of how well agencies are managing acquisition programs. This will help Congress determine whether horror stories are unique events or systemic problems. The Deputy Secretary of Defense testified that he was shocked to find that no Defense acquisition programs were meeting cost and schedule goals. The Defense Department's problems are not random occurrences.

The committee substitute requires agencies to achieve 90 percent of budget and schedule goals while meeting user requirements; and the Defense Department is to reduce by 50 percent the time it takes to field new weapons. If acquisition programs at an agency are significantly behind schedule or over budget, the agency must terminate poorly performing programs or justify continued funding. This will enable Congress to hold agencies accountable for their performance in managing purchases.

Second, the bill directs Federal agencies to streamline their acquisition management processes for products developed for the Government. It requires that the revised processes focus on results. It requires agencies to quantify what an item will cost, how well it must perform, and when it will be ready for use. It requires that decisions to move ahead be based on program results—results based on objective data. Today, these decisions are based on a consensus among interested parties.

When the bill is implemented, the decisions will be made on whether an item meets requirements, is within budget, is available when needed.

Third, the bill reemphasizes the commitment of Congress to a professional acquisition work force and establishes the incentive structure toward program performance. It directs Departments and agencies to tie pay and other incentives to program performance rather than the size of a manager's budget. For years, the Federal Government has ignored Congress' attempts to force greater reliance on commercial items and less reliance on Government unique specifications.

The pay-for-performance provisions are extremely important to the overall success of the bill because they provide a reward for members of the acquisition work force who find ways to fulfill needs at lower prices and shortened time lines associated with buying commercial items.

Fourth, the legislation reverses the preference for buying Government-unique items. It requires use of commercial items, unless it is shown that they do not meet actual Government needs. It streamlines the regulatory burden associated with buying commercial items. Coupled with the new incentive system, this bill provides a real opportunity for overcoming the so-called not-invented-here syndrome that has prevented Government from buying commercial items to do its work.

Fifth, the bill implements pay for performance for contractors, including use of contractor's past performance in decisions for future work, tying profits to results instead of costs, and tying payments to achievement of measurable results. The Government will be able to manage its contractors on the basis of how well they perform. The Defense Inspector General testified in support of tying progress payments to result.

The Director of the Office of Federal Procurement Policy, as well as several other witnesses from Government and industry, testified in support of tying contract award to past performance and the bill sets forth a structure effectively implementing this concept.

I remain concerned about one aspect of the buying system that the Congress has not addressed. The organization is a large bureaucracy with layer upon layer of management and dozens of buying organizations. Many of the bureaucratic layers exist solely for the purpose of satisfying the needs of the bureaucracy and provide no value added toward weapon system development. As a result, the American taxpayer is now paying for two bureaucracies in each of three military departments.

Quite frankly, I do believe that there should be a reduction in the layers of the buying bureaucracy. I am confident that the bill will result in efficiencies that will permit reducing this bureaucracy. But, the bill before us today does not require a reduction in the roughly 20 layers of management in the Federal buying system.

I am disappointed that my colleagues did not agree to ensure that this reduction occurs. My colleagues have agreed to have the General Accounting Office review acquisition work force staffing as part of its report on implementation required in title 9 of the bill. I expect that we will be able to return to the staffing issue once the report is completed.

The bill before us today streamlines procurement processes. The buying organizations also must be streamlined and changes to these organizations must flow from streamlining the acquisition process. Past attempts to streamline have been fought by the bureaucracy. For example, when the Goldwater-Nichols bill enacted the Packard Commission proposal to streamline the buying bureaucracy to three layers and a handful of commands, the Defense Department added a second multilayer bureaucracy to the old structure.

I can assure the President and others I will make this a top priority of mine.

According to the Congressional Budget Office, in fiscal year 1994, the Federal Government will buy about $450 billion of goods and services. The National Performance Review and Defense Department studies indicate that as much as $20 billion per year could be saved through more efficient procurement practices. With this much money at stake, Congress has a responsibility to ensure that the taxpayer's money is spent well.

A decade ago, I sponsored the legislation to create a commission to fix the problems in the Defense buying system. That bill led to the creation of the Packard Commission. My colleagues may remember that I also sponsored legislation to implement several Packard Commission recommendations. Some proposals were enacted, but many were considered too bold.

Today, the committee substitute to the Federal Acquisition Streamlining Act contains key Packard Commission recommendations, and I am happy that, after 9 years, the Senate is acting. The bill reported by the committee is a significant improvement over the original version introduced last October. Over the last 6 months, the reforms that we are making have grown from Tonka toys to a full-blown paving crew that can pave the way to significant savings.

Again, Madam President, I congratulate Members of the majority, including our distinguished chairman, Senator GLENN, as well as the minority Members, who have made this legislation possible. I believe the enactment of this legislation into law will be a very, very major step forward. I yield the floor.

The PRESIDING OFFICER. Who yields time? The Senator from Ohio.

Mr. GLENN. Madam President, I appreciate very much the remarks of my distinguished colleague who has been involved with these efforts for a long time. This is not something he just took up when this bill came up. He has repeatedly proposed legislation through the years on this. He and I have sat together through, I do not know how many hours, almost interminable hours, of hearings on subjects like this that we have referred to in the past and as was referred to by Senator LEVIN earlier, and in the Washington Post today by Mr. Barr, as "the grunt work of Government." That is basically what it is.

I do not know anything that will clear a hearing room out of most reporters faster than bringing up a subject such as procurement reform. It is just guaranteed to empty people out. It is not as exciting as talk about B-1 bombers and B-2 bombers and who is going to go into Bosnia or who is not going into Bosnia or what scandal there is someplace else. That is the confrontational role of reporting. I understand that.

But when you get into something like this where we are talking about trying to improve Government and make it more efficient—which you cannot quantify as much as saying each B-2 is going to cost $1 billion or something like that—you cannot quantify efficiencies in Government, yet that is one of the main functions of our Governmental Affairs Committee, to try to oversee Government in a way that brings more efficiency into Government.

We also have been told that statement in itself is an oxymoron, bringing efficiency into Government. I do not believe that. We have worked on this a long time, and those I have mentioned—Senator LEVIN, Senator NUNN, Senator ROTH and Senator BINGAMAN—have done yeoman's work for a long time on this. This is not something just dreamed up in the last couple of weeks.

I think the staff of the Governmental Affairs Committee started 3, 3½ years ago putting information together on this. It was probably 2½ or 3 years ago in the Armed Services Committee that I, along with Senator NUNN and Senator BINGAMAN, sponsored putting into our authorization bill for that year a requirement that the Pentagon do a study, since they are really the biggest spender in Government. We have all heard the gory stories of misspending of taxpayer money by the Defense Department—the $640 toilet seats, et cetera, et cetera. And those things should never happen. We know that.

Then what do we do after we do an investigation? What do we do after we have a hearing on a subject like that? We just expect, once this is pointed out, that those responsible will take corrective action. Yet, too often they are so mired in their same old ways of doing business, of putting out specifications—ridiculous, sometimes—and doing things that do not really make Government more efficient.

That is just a little bit of the background.

Obviously, I rise today to recommend enactment of S. 1587, the Federal Acquisition Streamlining Act of 1994. It is a comprehensive procurement reform effort. It is not the end-all and be-all of procurement reform. This is a good, great big, first starting step, and we need to keep at this, not only with hearings, but we need to keep at it with making certain that what we are proposing in this legislation will be carried out. Then let us see what is working. Let us come back a year from now. Let us fine tune this. Let us really get efficient procurement reform.

We all talk all the time about, if General Motors and Ford and IBM and GE and the rest of our major corporations in this country did not do their job better in procurement and efficiency in their operations than we do in Government, they would be broke inside of a year. We know that is true. But there is no reason why we cannot have procurement every bit as efficient as our major corporations.

This is a first step at trying to get to that point. It is aimed at streamlining the acquisition process and fulfilling many of the recommendations of the Vice President's National Performance Review for the procurement system. It represents the collaboration of the Committee on Governmental Affairs—which I chair—the Armed Services Committee, and the Small Business Committee.

We introduced S. 1576 with Senators BINGAMAN, LEVIN, NUNN, BUMPERS, and LIEBERMAN. I pointed out that a year and a half ago, the staffs of our respective committees met to review the laws and regulations of the entire procurement system. I add, in that regard, we quite often use the Defense Department as the most hideous examples of how we should not be buying things. But this procurement legislation applies to everything that the executive branch procures. It applies to the General Services Administration that does procurement of all the desks and everything else in Government. It applies all across Government to everyone, even though the bulk of the budget is spent by the Defense Department. It applies across the board.

This review is rooted in the report of the Acquisition Advisory Panel. It was assembled pursuant to Section 800 of the National Defense Authorization Act for fiscal year 1991 and the other legislation I mentioned which I introduced in this and other Congresses, notably S. 554, S. 555, and S. 556, Senator LEVIN's commercial products legislation and the National Performance Review.

So this was a melding of several different efforts. It is what we had going on in our Governmental Affairs Committee and what we did over in the Armed Services Committee, which Senator NUNN will also discuss, and the National Performance Review.

Out of all those recommendations, we then spent the last year putting these things together, having meeting after meeting after meeting among all the interested parties to try to put together something we think will be a major step forward in procurement reform and better efficiency for every taxpayer dollar that is spent.

A lot has happened in the last year and a half since we began this process. When we introduced the bill last October, we engaged in long, long discussions with the administration and all interested parties. In early 1994, the Governmental Affairs Committee conducted three joint hearings with the Armed Services Committee on the bill S. 1587. The committees received testimony on the bill from DOD; GSA; Office of Federal Procurement Policy, OFPP; General Accounting Office; the IG from the Defense Department; ABA; Business Executives for National Security, a coalition of various contractor industry associations, including the acquisition reform working group; the Information Technology Association of America; the Computer and Communications Industry Association; the Small Business Legislative Council; the Minority Business Enterprise Legal Defense and Education Fund; and the Computer Business Equipment Manufacturers Association.

To shorten that, we heard from an across-the-board spectrum of interests in the Federal procurement field. We wanted to get all of their input so that we could make this legislation as good as it possibly could be.

Following the hearings, representatives of the bipartisan leadership of all three committees reviewed each recommendation proposed during the hearings and in testimony received for the record. Based upon that review, a substitute bill was prepared.

On April 26 of this year, 1994, the Governmental Affairs Committee took up S. 1587 and approved the bill, as amended by a complete substitute offered by myself and Senators ROTH, LEVIN and COHEN, on a voice vote. Then on the afternoon of April 26, the Armed Services Committee met and approved the bill, as amended, by a vote of 22-0. What we have now, Mr. President, is what I believe to be an improved product that does represent a fine balance of the many interests affected by our procurement system. Testament to this achievement can be found in the range of views reflected in the cosponsors of this amended bill. Indeed, we are pleased to now have support on the minority side from Senators THURMOND, SMITH, and ROTH—who I mentioned earlier—and COHEN.

I think we have come a long way, Madam President. That accomplishment should be noted by my colleagues as we move forward to consider this bill. We have wrestled year in and year out with these issues and failed to enact any meaningful reform. Too often we have our hearings, point out all the deficiencies that go on in our system, we expect them to get fixed, and nothing seems to happen. We do this year after year after year. I do not have any idea how many hearings I have sat through, have chaired or been part of that pointed out where there has been monumental waste in Government.

Why has this been the case? Why have we not had more meaningful reform? I guess anyone working in this field knows that reform is a tall order. No. 1, no one wants to change who is operating in the system itself. They have their own way of doing business and do not want to upset the apple cart. It might mean shifting responsibilities, or it might mean requiring someone else to do something. Change is resisted in the system just because it is change.

Then also, the procurement system affects the entire spectrum of interests in our society. Reconciling all of these interests and policy concerns is not an easy task. In spite of these difficulties, as we face serious budgetary constraints, it is imperative that we maximize the efficiency of our procurement system to assure we can meet the needs of our citizens at the very least cost.

I cannot tell you today what savings are going to result from this bill. I wish I could. I wish I could say, "You pass this bill and we're going to have $3 billion a year in better efficiency in Government."

But I know one thing, I know we are wasting a terribly large amount of money every year in Government by the inefficiencies in Government. I know we are going to go a long way toward saving money once we get something like this started or passed and we start down the track of procurement reform.

We do face serious budgetary constraints. It is imperative we maximize the efficiency of our procurement system to assure we can meet the needs of our citizens, at least cost.

One way to improve the process is to leverage technology to our overall advantage. It increases our productivity.

Other ways, included in the provisions of S. 1587, involve the streamlining of some of the traditional audit and oversight mechanisms Congress set in place to address particular procurement abuses.

When we began drafting this bill, concerns were raised regarding the administrative burden associated with some of these oversight tools which resulted in a bifurcation of the Government and commercial markets. We have sought to minimize this undesirable consequence in an effort to strike a balance between efficiency and oversight.

In addition, we have all heard stories that it is too difficult to do business with the Government. There are major manufacturers in this country who do not want to get involved in business with the Government, and many small businesses say they cannot afford to get involved in business with the Government because there is too much paperwork involved. They have to put on extra people just to fill out all the paperwork. So it is just too difficult to do business with the Government. From cost accounting standards to socioeconomic laws, the Federal marketplace is represented to be a quagmire of laws and bureaucratic redtape, and we are trying to straighten some of that out.

Another major criticism of our acquisition process is our proclivity to overspecify our needs to the extent that we tell companies literally how to manufacture their products. We no longer have the luxury to specify costly processes. If something has to have specs written that are so detailed that the item being purchased requires that, then fine, I would not propose to stop that. But it has gone too far the other way where we overspecify on too many products, and that just wastes money. Indeed, the section 800 panel, and others, have called for us to leave this practice of overspecification and jump into the commercial market wherever we can, like any other large customer. Therein lie the benefits of competition and our national productive capacity. That change is at the core of S. 1587.

But change is not without risk. We have been forced to examine traditional roles of the Federal procurement system. The Government is not like any other commercial customer. For one thing, it spends precious taxpayer dollars and, thus, is in a position of great public trust. We cannot take chances or risks like a private company can.

In addition, the Government is expected to foster an array of social policy goals, policies that may not exist in the commercial markets. That is why I refer to our work as a balance. The three committees, I believe, have struck the essential balance to move meaningful reform into the Federal marketplace. S. 1587 seeks to foster and improve the acquisition of commercial items; the streamlined acquisition procedures under an elevated small purchase threshold; the competitive acquisition process; the protest and oversight process, which is an important one; and the procurement integrity and ethics laws.

In addition, the bill streamlines the procurement code through the repeal of redundant and obsolete laws, and it simplifies the system by standardizing governmentwide thresholds for TINA, the Truth in Negotiations Act, and statutory contract cost principles.

So what we have is a collection of major improvements that will bring our Federal procurement system into the next century and, hopefully, just catch it up with what is going on in this century. We are at a critical point, Madam President. For the first time, we have not only both Houses of Congress motivated to enact reform but also the administration, and I think the American people also would go right along with this. They have looked at their Government as being a wasteful Government for too long.

I implore my colleagues to seize this moment and quickly enact this reform measure for the benefit of the system and the Nation as a whole.

I ask unanimous consent to print in the RECORD, following my remarks, a summary of the Federal Acquisition Streamlining Act of 1994 as marked up by the Governmental Affairs and Armed Services Committees and the Small Business Committee. The Small Business Commitee ran out of time and were discharged of the bill by the time agreement we had. But all those committees have had the bill and passed on it.

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

(See exhibit 1.)

Mr. GLENN. Madam President, there are two other things I would ask unanimous consent be printed in the RECORD. One, there was some question in the press about whether the Defense Department was really behind this bill, whether they really were enthusiastically for it.

Now, this letter was written the 25th of May 1994. It was delivered to us. It is signed by both the Deputy Secretary of Defense and the Secretary of Defense, Mr. Perry. I would like to read it because I think it indicates they want to get on with this and they are using this as a major step toward cleaning up their procurement process also.

This was written to me as chairman of the Governmental Affairs Commitee. It reads as follows:

Dear Mr. Chairman:

As you go to the floor today to consider S. 1587, we wish to thank you and the members of the Governmental Affairs Committee for your assistance in moving this complex piece of legislation. Passage of acquisition reform legislation will not only make certain reforms possible but will be the catalyst for further improvements of DOD in its internal processes. Although passage of a bill in the Senate is only one of the many hurdles in the legislative process, it will signal to all that we are finally truly on the road to streamlining the acquisition process.

While there are a number of issues we believe must still be addressed if we are to truly streamline the acquisition process——

And I agree with them on that.

our hope is that we can address these issues at a future date. As such, we wholeheartedly support and endorse the passage of S. 1587 as reported by the Governmental Affairs and Armed Services Committees, with the addition of any amendments that will further streamline the process. By the same token, we ask your support in opposing the adoption of any amendment that will not streamline the process.

Again, your work sets the stage for acquisition reforms that are absolutely necessary if the United States is to maintain its defense capabilities in these critical times. Thank you for the tremendous support, by both the members and staff of your committees.

It is signed by the Deputy Secretary of Defense and the Secretary of Defense.

I ask unanimous consent that it be printed in the RECORD.

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

THE SECRETARY OF DEFENSE,
Washington, DC, May 25, 1994.

Hon. JOHN GLENN,
Chairman, Committee on Governmental Affairs, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: As you go to the floor today to consider S. 1587, we want to thank you and the members of the Governmental Affairs Committee for your assistance in moving this complex piece of legislation. Passage of acquisition reform legislation will not only make certain reforms possible, but will be the catalyst for further improvements by DoD in its internal processes. Although passage of a bill in the Senate is only one of the many hurdles in the legislative process it will signal to all that we are finally truly on the road to streamlining the acquisition process.

While there are a number of issues we believe must still be addressed if we are to truly streamline the acquisition process, our hope is that we can address these issues at a future date. As such, we wholeheartedly support and endorse the passage of S. 1587 as reported by the Governmental Affairs and Armed Services Committees, with the addition of any amendments that will further streamline the process. By the same token, we ask your support in opposing the adoption of any amendment that will not streamline the process.

Again, your work sets the stage for acquisition reforms that are absolutely necessary if the United States is to maintain its defense capabilities in these critical times. Thank you for the tremendous support, by both the members and staff of your committee.

Sincerely,

WILLIAM J. PERRY,
JOHN DEUTCH,
Deputy Secretary of Defense

Mr. GLENN. Madam President, one other statement on this. This is a statement of administration policy on S. 1587, the Federal Acquisition Streamlining Act of 1994. It reads as follows:

The administration strongly supports S. 1587. This essential legislation will help implement one of the most important recommendations of the Vice President's National Performance Review—to bring Federal procurement laws up to date and eliminate overly rigid bureaucratic procedures.

Enactment of this legislation will help achieve substantial savings to the Federal Government, both by making possible the downsizing of the procurement work force and by increasing the Government's ability to buy less expensive commercial products.

The administration intends to work in conference to address a number of concerns (e.g., relating to requirements for fast pay under the simplified acquisition threshold), especially those developing during the final stage of committee consideration of S. 1587.

Madam President, that should take away any doubt about the administration's position or any doubt about the support of the Secretary of State.

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

EXECUTIVE OFFICE OF THE PRESIDENT, OFFICE OF MANAGEMENT AND BUDGET,
Washington, DC, June 7, 1994.

STATEMENT OF ADMINISTRATION POLICY

(This statement has been coordinated by OMB with the concerned agencies.)

S. 1587—FEDERAL ACQUISITION STREAMLINING ACT OF 1994—(GLENN (D) OH AND 7 OTHERS)

The Administration strongly supports S. 1587. This essential legislation will help implement one of the most important recommendations of the Vice President's National Performance Review—to bring Federal procurement laws up to date and eliminate overly rigid bureaucratic procedures.

Enactment of this legislation will help achieve substantial savings to the Federal Government, both by making possible the downsizing of the procurement workforce and by increasing the Government's ability to buy less expensive commercial products.

The Administration intends to work in conference to address a number of concerns (e.g., relating to requirements for fast pay under the simplified acquisition threshold), especially those developing during the final stage of committee consideration of S. 1587.

Mr. GLENN. For those who are following this, I would commend for reading a summary of specific provisions of the act, which I have already placed in the RECORD. It is quite lengthy, but it will give a good summary to those who are interested in following this, and I recommend it for reading by those of my colleagues who will be coming to the floor tomorrow to debate this particular issue.

Madam President, it has been a long effort of a lot of people and committees, all those in the Chamber right now, Senators NUNN, BINGAMAN, ROTH, myself, and others who have been involved with this. We look forward to getting this passed. As I said starting out, Senator LEVIN placed it right. This is one of the those items of grunt work of Government. It is not a brand new missile system or something like that. If we are ever going to have this Government work the way it should, then we are going to not only have to have this but other legislation that really brings efficiency of Government to the fore where we should be setting the example for this country, not trying to catch up with what businesses are already doing in the private sector. I think we are making a big step in the right direction on this.

Madam President, I yield the floor.

EXHIBIT 1

SUMMARY S. 1587—THE FEDERAL ACQUISITION STREAMLINING ACT OF 1994

COMMERCIAL ITEMS

The bill encourages the use of commercial, and where such items are not available, other non-development items (NDIs) and makes it substantially easier for federal agencies to purchase such items. The purchase of proven products such as commercial and NDIs can eliminate the need for research and development, minimize acquisition lead time, and reduce the need for detailed design specifications or expensive product testing.

It reduces impediments to the purchase of commercial items by exempting such purchases from over 30 statutes that are unique to government purchases, and have no counterpart in the commercial sector, such as:

Contingent fees certification.

Procedural requirements of the Anti-Kickback Act.

Contract Work Hours and Safety Standards Act.

Drug-Free Workplace Act of 1988.

Prohibition limiting subcontractor direct sales to the U.S.

Requirement to identify suspended or debarred subcontractors.

Identification of suppliers and sources.

Fly American restrictions.

Procurement integrity certifications.

Federal Water Pollution Control Act certifications.

Clean Air Act certifications.

Inventory accounting requirements.

Prohibition on contracting with persons convicted of defense-related felonies.

"Flowdown" of statutory requirements

In addition to the above statutes that are waived by the bill for all commercial primes and subcontractors, the bill also addresses the issue of other statutes which apply at the prime level and which also "flowdown" to subcontractors under current law.

Under the bill, statutory requirements that apply at the prime level need not be "flowed down" to subcontractors supplying commercial items, if flowdown is waived in the Federal Acquisition Regulation.

The bill permits waiver of "flowdown" of clauses in two circumstances:

(1) Flowdown may be waived from commercial primes to all subcontractors (including subcontractors supplying items that do not meet the bill's definition of commerciality); and

(2) Flowdown may be waived from noncommercial primes to commercial subcontractors.

Truth in Negotiations Act

Amends the Truth in Negotiations Act for Department of Defense to make permanent the $500,000 threshold and to create a new commercial items exception. This would relieve commercial contractors from their number one complaint—the burden of collecting cost data for the government.

The bill codifies TINA for civilian agencies with the same provisions as described above.

SIMPLIFIED ACQUISITION THRESHOLD

There is a current "small purchase threshold" of $25,000.

Purchases under $25,000 may use simplified procedures established by regulation in lieu of the detailed "full and open competition" procedures established by statute.

The bill would replace the $25,000 threshold with a new "Simplified Acquisition Threshold" of $100,000, as recommended by both the Vice President's National Performance Review (NPR) and the Advisory Panel.

The bill would establish a $100,000 threshold for a number of different statutes that establish paperwork and record-keeping requirements not applicable in the commercial sector. Purchases below the small purchase threshold would be exempt from these requirements, which apply to other government procurements. These include:

Contingent fees certification.

Contract audit requirements.

Procedural requirements of the Anti-Kickback Act.

The Miller Act.

Contract Work Hours and Safety Standards Act.

Drug-Free Workplace Act of 1988.

Prohibition limiting subcontractor direct sales to the U.S.

Requirement to identify suspended or debarred subcontractors

identification of suppliers and sources.

Prohibition on contracting with persons convicted of defense-related felonies.

This threshold would expand the streamlined process of making small purchases and reduce the amount of staff time needed for such purchases, resulting in substantial savings for the government, and would continue the requirement that a notice of any procurement over $25,000 be published in the Commerce Business Daily 15 days prior to the issuance of a solicitation.

After the issuance of this notice, however, simplified acquisitions could follow any procedures described in the notice—for example, by shortening the period for the submission of offers.

The bill would phase out the requirement to publish notice of purchases below $100,000 when electronic commerce procedures and systems are in place.

The bill reserves contracts above $2,500 but under the simplified acquisition threshold for small business, and specifically authorizes continued set-asides of all contracts under the threshold for minority small businesses.

The bill would exclude purchases of less than $2,500 from the small business reservation, to make it possible for agency officials to make simplified purchases and credit card purchases.

COMPETITION IN CONTRACTING

Full and open competition

The bill retains the essential features of the Competition in Contracting Act (CICA)—full and open competition, with limited exceptions.

Task orders for advisory and assistance services

The bill adds a new section to CICA to specifically address task order contracts for advisory and assistance services (e.g., consultants).

Such contracts serve a useful purpose, but must be structured carefully to ensure that they are not abused to avoid competition and funnel money to favored contractors.

The new provisions added by the bill would expressly authorize the use of such contracts, subject to the following:

The duration of the contract is limited to 5 years.

If the contract is intended to exceed 3 years and the estimated value is in excess of $10 million, then under most circumstances the solicitation must provide for multiple awards—i.e., two or more contractors to have the opportunity, during the period of the contract, to compete for specific tasks under the contract.

These restrictions do not apply to the existing authority to enter into to task or delivery order contracts for other goods and services (i.e., for matters other than advisory and assistance services).

Acquisition of expert services

The bill would amend CICA to add a new exception, giving agencies the flexibility to retain expert witnesses for use in litigation without going through a competitive process. As in the case with other CICA exceptions, this provision would require agencies to obtain a justification and approval under CICA prior to making a sole source purchase.

Two-phase selection procedures

The bill would authorize use of a "two-phase" selection process for matters that involve substantial design work before a realistic cost or price proposal can be developed. In step one, proposals would be evaluated upon technical approach and qualifications. Those selected in step one would then proceed, in step two, to submit competitive proposals, including full cost and price data.

BID PROTESTS

Notice and debriefing

There is widespread consensus that the volume of protests is attributable in part to the fact that disappointed offerors lack clear information on why their offers were not accepted.

By requiring contractor debriefings, the bill provisions should reduce the number of protests that are either without merit or seek information simply to confirm that the award process was fair.

The bill:

Requires greater detail to be made available with respect to evaluation factors and subfactors while establishing an accelerated notice, debriefing, and protest schedule.

Notice must be given to all offerors as soon as practicable after the contract is awarded.

Requests by offerors for debriefings must be made within 3 days after notice of the award.

The debriefing must take place promptly, and must contain basic information about the award decision.

Protest adjudication

Consolidates judicial jurisdiction over bid protests in the Claims Court, as recommended by the Advisory Panel.

The bill makes it clear that the Court of Claims has jurisdiction over bid protests to the exclusion of the district courts, but not to the exclusion of GAO and GSBCA.

The bill authorizes the payment of consultant and expert witness fees (in addition to attorney's fees) in protests to the GAO and the GSA Board of Contract Appeals (GSBCA), as recommended by the Advisory Panel. These provisions would also limit all such fees to the levels established in the Equal Access to Justice Act for fees against the United States generally. This provision should add uniformity and cost savings to the process.

S. 1587 addresses frivolous or bad faith protests to the GSBCA, as recommended by the Advisory Panel, by authorizing the GSBCA to dismiss a protest that it is frivolous, brought in bad faith, or does not state on its face a valid basis for protest. In addition, it authorizes the GSBCA to invoke procedural sanctions where a person brings a frivolous or bad faith protest, or willfully abuses the board's process.

Generally, the bill would also adopt a number of other changes to provisions regarding bid protests to the Comptroller General, the GSBCA, and in the federal courts.

Specifically, the bill would: (1) clarify the GSA's authority to revoke a delegation of authority after the award or a contract, where there is a finding of a violation of law or regulation in connection with the contract award; (2) clarify the GSBCA's authority to review contracting decisions that are alleged to have violated a statute, regulation, or the conditions of any delegation of procurement authority; (3) provide for the public disclosure or any settlement agreement that provides for the dismissal of a protest and involves a direct or indirect expenditure of appropriated funds.

The bill amends the Comptroller General's authority to provide that the Comptroller General may recommend the payment of attorneys' fees in bid protest cases, rather than directing agencies to pay such fees. The bill would address questions that have been raised about the constitutionality of existing law.

The bill authorizes agencies to continue the procurement process up to the point of award of a contract, notwithstanding the filing of pre-award protest, if the agency head determines that the action is in the best interest of the United States.

Acquisition management

The bill contains a number of management provisions, including:

A statement of congressional policy that agencies achieve 90% of cost and schedule goals without reducing product performance or capability.

A requirement that cost and schedule goals be established for DOD and civilian agencies:

A requirement that agencies identify and review programs that are significantly behind schedule, over budget, or out of compliance with performance of capability requirements;

A requirement for annual reports (based on data from existing management systems) on progress made in implementing the congressional policy;

A requirement that the executive branch establish a system of incentives for performance in the acquisition workforce;

A requirement for DOD to define in regulations a simplified acquisition program cycle that is results-oriented; and the provision for exceptional performance awards, as recommended by the Administration.

The bill would add in title V the designation of 6 DOD programs as pilot programs and authorize the testing of commercial-type acquisition procedures for these programs.

Procurement ethics

S. 1587 substantially streamlines the procurement ethics laws. For the past decade Congress has enacted a series of new procurement ethics provisions. Although these provisions address specific ethics provisions, together they overlap and are difficult to implement.

The Senate voted to streamline and consolidate the procurement ethics laws, while retaining needed safeguards, in an amendment to the Department of Defense Authorization drafted in 1991. This amendment was never enacted. The draft bill reflects the Senate amendment.

The bill would amend the Procurement Integrity section of the OFPP Act to streamline the recusal provision; consolidate various revolving door restrictions; harmonize the gratuities provision with government-wide ethics provisions; revise certification provisions and eliminate unnecessary administrative burdens; and clarify several other provisions.

Establishing a uniform procurement system

The bill amends the procurement laws to promote the uniform treatment of Department of Department of Defense and Civilian agency procurement.

Amends the Federal Property Act to establish contract cost principles for civilian agencies. Contract cost principles provide that certain types of costs—such as entertainment costs, lobbying expenses, advertising costs, and so-called "golden parachute" payments—should not be paid by the taxpayers and are not "allowable" on federal contracts.

Establishes cost certification procedures and penalties identical to those that have long been applicable in Department of Defense procurements.

Repeals 10 USC 2410, which establishes Department of Defense-unique requirements for the certification of contract claims. The Contract Disputes Act of 1978 establishes

government-wide requirements for the certification of claims. These requirements would remain in effect and would be amended to clarify that they govern all claims, including those at the Department of Defense.

Other recommendations adopted

Adopts several dozen other recommendations of the Advisory Panel to streamline and improve the acquisition laws. Some significant examples includes:

Providing flexibility for agencies in approving the use of non-competitive procedures when there is a valid justification.

Raising the threshold for application of the contract cost principles to $500,000.

Repealing the requirement for contractor employees to travel at government airfares (which are rarely available to contractors).

Providing consolidated audit provisions for both the Department of Defense and civilian agencies.

Repealing the requirement for Defense Enterprise Programs (which has been rendered obsolete by the new pilot program legislation).

Repealing the mandatory use of competitive prototyping in major programs.

Repealing the mandatory use of dual sourcing in major programs.

Repealing and consolidating obsolete and redundant Department of Defense-unique laws.

Repealing the Walsh-Healey Act (which no longer has any impact on prevailing minimum wage rates).

Mr. NUNN. Madam President, I am pleased to join my colleagues on the Armed Services Committee and Governmental Affairs Committee and the Small Business Committee in supporting S. 1587, the Federal Acquisition Streamlining Act of 1994. I congratulate Senator GLENN and Senator ROTH for their leadership in the Governmental Affairs Committee. I am also a member of that committee, and I have watched it up close because I have been on both the Armed Services Committee and the Governmental Affairs Committee. They have done a splendid job. I also wish to commend my colleague, Senator THURMOND, for his excellent work on this bill.

Madam President, over the past decade, the Congress and the executive branch have struggled to make sense out of the complex process of supplying our men and women in uniform with the best and the most cost-effective weapons systems. In the 1980's, the need for reform was underscored by incidents of fraud, waste, and abuse documented at congressional hearings, in GAO reports, and IG audits. At the same time, the graphic success of the equipment used by our Armed Forces in Operation Desert Storm illustrated the fact—overlooked by many before the war—that the acquisition system in place in the 1970's also could produce the finest weapons systems in the world.

Madam President, the key problem however was—and is—that the system that produced those weapons took too long and cost too much. In the aftermath of the cold war, with the increasing pressure to reduce the defense budget, we simply cannot afford the huge costs associated with an inefficient acquisition system.

During the 1980's, the acquisition laws and regulations proliferated as Congress and the executive branch attempted to balance the need for reform with the need to ensure continued effective research and development. The result was a patchwork quilt of often contradictory requirements that increasingly encumbered the acquisition process as illustrated in testimony before the committee from the Department of Defense, industry witnesses, and such independent observers as the General Accounting Office.

Our hearings on acquisition reform, as well as our continuing oversight of the procurement process, have demonstrated that the current acquisition system is a bureaucratic nightmare. The process of procuring equipment and services for our military and civilian agencies takes too long, costs too much, and suffers under a crushing burden of wasteful overhead.

We need to transform an outmoded system of regulating defense-dependent industries into a new system that will enable the Government to buy goods and services cheaper and faster; that will facilitate commercial and military integration; and that will encourage the development of dual-use technologies to meet the defense industrial and technology base requirements of the future.

The bill before us will enhance the ability of the Department of Defense as well as the other agencies of the Federal Government to achieve these vital goals in a manner that appropriately balances the need to eliminate wasteful paperwork with the need to ensure the basic integrity of the procurement process.

Madam President, acquisition reform is not a particularly glamorous subject, as Senator GLENN has already observed. The maze of statutes and regulations that govern the purchase of everything from pencils to nuclear submarines presents a daunting challenge to any reformer. I commend the bipartisan leadership of each of the cooperating committees and the subcommittees for the diligent attention they have brought to this subject and for the attention that has been brought to the detail, which is mind boggling to say the least.

I would like to pay particular tribute to Senator JEFF BINGAMAN, Chairman of the Subcommittee on Defense Technology, Acquisition and the Industrial Base of the Committee on Armed Services. Long before acquisition streamlining became fashionable, he had the vision to initiate legislation which was enacted as section 800 of the National Defense Authorization Act for fiscal year 1991, which required DOD to establish a Government-industry panel to propose comprehensive reform. JEFF BINGAMAN had the tenacity to insist the distinguished panel be appointed after the Department of Defense initially ignored the law, and Senator BINGAMAN has played a leading role in developing the legislation that is before us today.

The Senators who formed the core group that developed this bill reflect a diverse, bipartisan support for acquisition reform. We have benefited from the expertise of Senator STROM THURMOND, ranking member of the Armed Services Committee, Senators JOHN GLENN, BILL ROTH, CARL LEVIN, BILL COHEN, BOB SMITH, and DALE BUMPERS as well as LARRY PRESSLER. Each of them either chair the full Committee on Armed Services, Governmental Affairs, Small Business, or one of the subcommittees.

Mr. President, the Republican side of the aisle has been cooperative and their ranking members, whom I have already named, have done a very good job of bringing their point of view to bear on this legislation and also in supporting it in a very constructive way.

Madam President, I would like to review the painstaking process that has been used to develop this legislation.

It is my hope that we will not be on the floor for several days on the bill but rather that we will be able to pass it in a day or two. But that remains to be seen. But I do not think anyone should believe this bill has been rushed.

The Section 800 Advisory Panel completed a mammoth undertaking, producing a 1,800 page report in December 1992 that reviewed more than 600 procurement laws and proposed to amend or repeal nearly 300 laws. The panel presented its report to the Armed Services Committee at a hearing on March 10, 1993. I would like to express a special appreciation for the outstanding effort by the members of the panel, and the panel's staff, in producing this very comprehensive report. I ask unanimous consent that a list of the panel's membership be included in the RECORD at the conclusion of my remarks.

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

(See exhibit 1.)

Mr. NUNN. Madam President, in the spring of 1993, the bipartisan leadership of the Armed Services, Governmental Affairs, and Small Business Committees directed their staffs undertake a joint review of the Section 800 Report with a view toward developing implementing legislation. In a parallel effort, Vice President GORE's National Performance Review examined the acquisition system, and endorsed many of the procurement streamlining recommendations of the Section 800 Panel.

I would like to commend the Vice President for his leadership in this overall effort. He has been extremely helpful in facilitating and ironing out some of the problems that we have had,

even in the last 2 weeks. So the Vice President and his staff, I think, deserve a real pat on the back for their role in pushing this overall process.

The bipartisan/tricommittee effort produced S. 1587, the Federal Acquisition Streamlining Act, which was introduced on October 26, 1993. The bill was then available for more than 4 months before hearings began, which provided the opportunity for review and comment on the specific legislative proposals. The Armed Services and Governmental Affairs Committees then held three joint hearings, at which we heard from the administration, the defense industry, the nondefense industry, the oversight community, and other interested parties. Following the hearings, we reviewed each comment and recommendation, and prepared a complete substitute. The substitute was adopted by the Governmental Affairs and Armed Services Committees on April 26, 1994.

They had their meeting in the morning. We had ours in the afternoon, both on April 26, 1994.

Most of the provisions in S. 1587 are repeals or modifications that reduce, rather than add to, the body of acquisition legislation. The proposed statutory changes are detailed and complex. The underlying issues, however, involve the foundations of the acquisition process—auditing practices, oversight activities, competition in contracting, paperwork reduction, integration of the government and commercial sectors, and simplified small purchases, and strengthening the technology and industrial base.

The bill makes the following key changes in the law.

The following are the key changes viewed from my perspective.

First, the bill revises and consolidates numerous acquisition statutes to eliminate redundancy, provide consistency, and facilitate implementation.

Second, the bill encourages the acquisition of commercial end-items and components—including acquisition of commercial products that are modified to meet Government needs—by exempting commercial items from Government-unique certifications and accounting requirements that serve as a disincentive for commercial companies to participate in Government acquisitions, and which add to the costs when they choose to participate. The purchase of proven products such as commercial and nondevelopmental items can eliminate the need for research and development, minimize acquisition lead time, and reduce the need for detailed design specifications or expensive product testing, which usually takes not only thousands of hours but also thousands of people.

Third, the bill raises the threshold for the use of simplified acquisition procedures $25,000 to $100,000. Although purchases under $100,000 account for only 16 percent of the Government's procurement expenditures, they account for 96 percent of the Government's procurement actions. This generates huge manpower and paperwork requirements for relatively small contracts. Use of simplified procedures will save time, money, and manpower.

Fourth, the bill revises and simplifies the bid protest process.

Fifth, the bill consolidates and simplifies the confusing and often contradictory rules that govern the relationships between Government and private sector procurement personnel.

Finally, the bill promotes efficiency by establishing procedures that will apply on a uniform basis to both the Department of Defense and the civilian agencies, to the maximum extent practicable. This will greatly facilitate the ability of suppliers, particularly in the commercial sector, to meet the needs of the Government without excessive overhead.

Madam President, as we debate this bill, I hope we will bear in mind that the central purpose of our effort is streamline the massive bureaucratic structure that is strangling our acquisition system. It is always tempting to craft a legislative solution to every problem and that is one of the reasons we need to reform the process so much. In the past, every time we have had a problem that pops up in the acquisition system, either the Congress, through legislation, or the executive branch, through regulation, has designed a whole series of laws and regulations to meet one problem that may have been valid in the case of that problem, but the result has been to pile one rule on top of another, and the final bottom line is that the overall structure simply does not work effectively or efficiently.

The lesson of the last decade—to which our bipartisan, tricommittee group subscribes—is that the system has been smothered by good intentions. We must direct our attention to correcting problems through oversight, management improvements, and accountability, rather than simply throwing more statutes at longstanding problems. I strongly urge that we resist the siren song of reform through legislation, and resist any amendments which do not clearly streamline the acquisition system.

Madam President, I send to the desk a copy of the task force and the staff members on the Section 800 Panel. I think all of these people deserve our thanks and the thanks of the taxpayers of America.

I yield the floor.

EXHIBIT 1

THE ADVISORY PANEL ON STREAMLINING AND CODIFYING THE ACQUISITION LAWS, ESTABLISHED PURSUANT TO SECTION 800 OF THE NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 1991

PANEL MEMBERS

Pete Bryan, Director, Contract Policy and Administration, Office of the Secretary of Defense.

Allen Burman, Administrator for Federal Procurement Policy.

Anthony Gamboa, Deputy General Counsel, Department of the Army.

Jack Harding, Vice President, Contracts, Raytheon Corporation.

LeRoy Haugh, Vice President, Procurement and Finance, Aerospace Industries Association.

Thomas J. Madden, Partner, Venable, Baetjer, Howard and Civiletti.

Ralph Nash, Jr., Professor of Law, George Washington University.

F. Whitten Peters, Partner, Williams and Connolly.

Gary Quigley, Deputy General Counsel, Defense Logistics Agency.

Major General John D. Slinkard, USAF, Deputy Chief of Staff for Contracting, Headquarters, Air Force Materiel Command.

Rear Admiral W. L. Vincent, USN, Commandant, Defense Systems Management College.

Robert D. Wallick, Partner, Steptoe & Johnson.

Harvey Wilcox, Deputy General Counsel (Logistics), Department of the Navy.

Mr. THURMOND addressed the Chair.

The PRESIDING OFFICER. The Senator from South Carolina [Mr. THURMOND] is recognized.

Mr. THURMOND. Madam President, I am very pleased to be a cosponsor of this legislation, and I want to commend all of those who worked so hard on it.

I especially wish to commend the chairman of the Senate Armed Services Committee, Senator NUNN; Senator GLENN; Senator COHEN; Senator ROTH; Senator BINGAMAN; Senator SMITH; Senator LEVIN; Senator BUMPERS; Senator PRESSLER; Senator LIEBERMAN; and Senator COATS for the great work they have done on this legislation.

I also wish to commend and thank Jonathan Etherton, who handled this legislation for the Republicans on the Senate Armed Services Committee. He has done a fine job in connection with it.

Madam President, on April 26, the Senate Armed Services Committee marked up S. 1587, the Defense Acquisition Streamlining Act of 1994. This act is the most significant piece of acquisition legislation since Congress passed the Competition in Contracting Act in 1984. It represents the most important bill reported by the Armed Services Committee since the Goldwater-Nichols Reform Act of 1986.

S. 1587 is the result of a train of events that began over 10 years ago. Many in this Chamber will recall the stories that began to emerge in 1983 of outrageous prices the armed services

were paying for spare parts and support equipment. They included the reports of the $450 hammer and $700 pliers. Upon closer examination, one of the legitimate problems that surfaced was the lack of competitive pressures on prices. This resulted in the passage of a number of new laws to open the system to new suppliers. The prices for many of supplies for the Department of Defense dropped when the laws went into effect.

Unfortunately after the principle of competition was established in law, Congress continued to legislate the operation of the procurement process in ever greater detail. Some of these new laws were necessary, but many added complexity and delay and little else. Rather than taking a comprehensive view to reforming and streamlining the process, we passed piecemeal legislation to address the latest media story of wasteful or questionable spending. By the late 1980's the result was a procurement system burdened with contradictory requirements, while the problems of increased costs and delays in fielding new technology were not addressed.

In 1990, under the leadership of Senators BINGAMAN and COATS of the Senate Armed Services' Subcommittee on Defense Industry and Technology, the Congress passed section 800 of the Defense Authorization Act for fiscal year 1991. Section 800 established a Government-industry advisory panel to undertake a comprehensive review all of the acquisition laws and to propose the repeal or modification of such laws in order to streamline the process of buying goods and services in the Federal Government. The Department of Defense was directed to appoint recognized experts from the defense industry, the legal community, and the Government to conduct the detailed review and to make specific recommendations.

Over the years we had had no shortage of reports with suggestions for improving the Federal acquisition process. The most recent of these was the Packard Commission Report of 1986. Unfortunately, implementation of the suggestions from these reports has been at best incomplete. We drafted the charter for the Section 800 Advisory Panel in a manner to ensure that their report would not be yet another study to gather dust on the shelf. We required the focus of review to be the specifics of the laws, not the regulations or internal agency directives. In preparing their report, the advisory panel also took the added step of preparing a detailed legislative history for each of the laws under review.

The Secretary of Defense submitted the report to Congress in January 1993. The submittal coincided with the recognition that a very fundamental reform of the acquisition process, especially in the Department of Defense, has been long overdue because of a number of factors. The first is the drastic and accelerated reductions in spending on national security which may continue into the foreseeable future. I have spoken elsewhere of my grave concerns about this trend in defense spending, but an immediate outcome is the need to cut the numbers of administrative personnel to allow us to focus the remaining funds on military capabilities. The administration has proposed a reduction of 250,000 in the overall Federal work force and a significant portion of this reduction will be made up of acquisition personnel.

The second major factor is the development of very dynamic commercial high-technology industries. For example, as recently as 10 years ago, the Department of Defense was in a position to determine the most demanding performance and reliability standards for the electronics industry. Now it is the commercial marketplace which sets standards that often exceed to a significant degree those developed by the Federal Government.

Madam President, over the years we have built a wall between those businesses selling to the Federal Government and those selling to commercial customers. The accounting rules are very different. Defense contractors must conform to a number of special contract requirements that deviate from standard commercial practices and must be willing to submit reams of information as the price of doing business with the Federal Government. As defense resources shrink and commercial markets grow, companies with the best technology are less willing to seek Government contracts. The major theme emerging from the section 800 advisory panel report is the need to allow the Federal Government to meet purchasing requirements using commercial terms and conditions to the maximum extent practicable. The panel specifically recommended that the definition of a commercial product be expanded to cover a broader range of items; that the requirements for the supply of certified cost and pricing data be waived in a greater number of cases, and that transactions for the purchase of commercial items be exempt from many Government-unique socioeconomic requirements.

Greater reliance on commercial items and practices will save the taxpayers billions of dollars per year. Some recent studies suggest that products developed for commercial sale cost 30 to 50 percent less than similar products developed for Government use. The costs of research and development for commercial products are paid by commercial customers, not the Federal Government. Finally, we need fewer people to oversee commercial product contracts because the prices are set by the marketplace, not by Government cost regulations.

S. 1587, the legislation we are debating today, embodies most of the section panel's recommendations with respect to the purchase of commercial products. If this legislation provided for no other change to current practice, it would merit the strong support of the full Senate. This legislation will do much more, however. For example, it will raise to $10,000 the threshold for the use of more streamlined and simplified award procedures on contracts. This will allow the use of simplified procedures for 98 percent of all procurement actions. This change will benefit all businesses, especially small businesses, selling to the Government by exempting them from some of the expenses associated with complying with unique Government requirements. The increase in the simplified acquisition threshold will also reduce significantly the workload for Federal agencies on these smaller value contracts.

With the proposed cuts in defense spending, we have reached a point where it is no longer feasible to maintain the status quo in Federal procurement policy. We must simplify the procurement process to allow us to reduce the number of Government contracting personnel while improving the level of professional competence of those who remain in Government service. We must begin to tap more fully into the commercial sector to meet the needs of the Department of Defense and the other agencies.

This legislation will be the catalyst for a thorough reform of the Defense Department acquisition process. It will help us shrink the size of the Government bureaucracy and foster greater reliance on the marketplace for meeting taxpayers needs. It will reduce administrative costs and allow our Government procurement personnel greater exercise of business judgment. I urge my colleagues to support the Federal Acquisition Streamlining Act of 1994.

Madam President, I yield the floor.

Mr. MCCAIN. Mr. President, the Government procurement process through the slow accretion of rules and regulations over the years has become overly complex and cumbersome. Reform is needed. In no area is this reform more urgent than with respect to the defense acquisition system. That urgency stems from a number of factors.

The drive to combat the mounting Federal deficit has placed extraordinary pressure on the defense budget. Since 1985, the defense budget has been reduced by 35 percent. Yet despite this massive and, I believe, ill-advised cut in defense spending, the Pentagon's budget continues to suffer attacks. The austere budget climate makes it absolutely imperative that we stretch every defense dollar as far as possible.

A second factor prompting action is the fundamental change taking place in our military-industrial base resulting from defense downsizing. Diminished Government out of business and forced others to dramatically scale

back their work forces and operations. While some contraction in our defense industrial base was inevitable with the end of the cold war, the uncertain national security environment which the United States faces today requires that we have a robust, flexible, and highly responsive defense industrial base.

Regrettably, the cumbersome Federal acquisition process discourages many companies from competing for Government contracts. This reduces participation, and thus diminishes competition, raising Government procurement costs. Further, the current process places substantial restrictions and burdens on defense contractors which are unnecessary, the added cost of which lessens the buying power of our defense dollars. Finally, it has fostered a separation of commercial and military production which impedes cross fertilization between these two sectors of the economy, hindering the full utilization of technological innovation.

If enacted into law, S. 1587 would institute reforms in three areas for both general Government and defense procurement. First, the simplified acquisition procedures previously applicable to Government contracts under $25,000 are expanded to include contracts of up to $100,000. Since over 90 percent of the total number of Government contracts each year fall under this higher threshold, the benefits of simplification will be widespread and dramatic. Second, S. 1587 revamps the acquisition rules to encourage and facilitate procurement of commercially available items whenever feasible, allowing the Government to reap the benefits of low-cost, mass-produced commercial items, rather than commissioning expensive custom-made products. Finally, S. 1587 streamlines the entire process of contract formation, administration, and award protests.

More work stills need to be done to improve Federal acquisition. The acquisition process to multimillion dollar contracts, particularly procurement of major defense systems, needs to be reformed to enhance competition, cut costs, and best serve the public interest. But that is work for another day. The Federal Acquisition Streamlining Act of 1994 is an important first step in reforming Federal procurement, and I urge my colleagues to support it.

Mr. COHEN. Madam President I rise today in support of S. 1587 as amended by the Governmental Affairs Committee.

The Federal procurement system is enormous. According to figures published by the Vice President's National Performance Review, the Federal Government currently employs approximately 142,000 employees to manage its procurement bureaucracy. This workforce is responsible for enforcing 42,000 pages of procurement regulations and spending $200 billion for the goods and services the Federal Government consumes every year.

The overly complex and cumbersome requirements of the Federal procurement system often intimidate potential vendors to the point of discouraging their participation in the procurement process. These cumbersome requirements discourage commonsense purchasing decisions, resulting in purchasing decisions that are penny-wise but pound foolish. The current procurement process has a chilling effect on competition that ultimately translates into higher costs to the taxpayers.

Undoubtedly, eliminating excessive paperwork requirements will result in the reduction of wasteful expenditures. To illustrate the ridiculous and excessive cost of paperwork, I would like to offer a recent example at the Department of Defense which I have asked the General Accounting Office to investigate. DOD annually spends about $2.3 billion to process the roughly $2 billion it spends on travel. In other words, it costs more to process the vouchers than it does to travel. If the procurement bureaucracy suffers from the same processing costs as the Pentagon's travel system, then reducing paperwork requirements should produce significant savings.

We need to reform the procurement system not only to save money, but to help the Government overcome its image of incompetence. The Federal Acquisition Streamlining Act is major reform, reform which must occur if the Federal Government hopes to regain its ability to perform in the best interest of its citizens.

For the past 17 months, members of the Governmental Affairs, Armed Services and Small Business Committees have worked in a bipartisan effort to reform the procurement process to better serve the interest of the American taxpayers. These reforms include increasing the benefits of competition, easing the burden to business and ensuring that Government vendors are treated fairly and reasonably. Although there have been some disagreements during our working group and committee deliberations, the legislation before us today represents the result of compromises that overall, represent constructive steps to reform the procurement process.

As a result of its efforts, a bipartisan working group of Senators, made up of myself and Senators GLENN, ROTH, NUNN, THURMOND, LEVIN, BINGAMAN, SMITH, and BUMPERS successfully crafted a compromise that will sustain competition and significantly simplify the procurement process. The bill eliminates much of the bureaucratic encumbrances to vendor participation while ensuring adequate oversight and protection of taxpayer dollars. It also creates many of the same incentives that private citizens use when making buying decisions and will speed delivery of goods and services to Government. To achieve these objectives, Government contracting offices will be permitted to buy commercial products directly from commercial sources, rather than waiting months and in some cases, years, to write complex, Government-specific specifications that would require specialized manufacturing of items, like ashtrays and chocolate chip cookies, that are commonly found in the marketplace.

This legislation provides a solid foundation for the fundamental change necessary to reform the way the Federal Government spends more than $200 billion in taxpayer dollars every year. This measure marks a significant step toward improving how the Government gets what it needs in a timely manner, especially when making purchases under $100,000. Specifically, this legislation increases the current small purchase threshold from $25,000 to $100,000 and changes the name of the small purchase threshold to the "simplified acquisition threshold." This provision allows the Government to buy goods and services under $100,000 through a simplified process which, in large part, mimics the process most individuals and businesses go through when making decisions on behalf of themselves and their businesses. In essence, Government purchases made under the simplified acquisition process require the contracting officers to shop for goods and services, compare prices and base purchases on best value.

We anticipate that much of the Government's shopping under the simplified acquisition threshold will also be done through the use of electronic bulletin boards.

Consequently, Government purchases under $100,000 will no longer be required to go through time-consuming requirements such as publishing procurement notices in the Commerce Business Daily and awaiting responses through the mail. Instead, purchase and sale notices under $100,000 can be transacted through the use of computer messages.

This implementation of the simplified acquisition threshold provision alone will significantly reduce the paperwork required to meet the requirements of the current Federal regulations which resulted in the National Performance Review's, now famous, ashtray example.

The number of transactions under the $100,000 threshold represent the vast majority of contracting actions by the Federal Government. At the Department of Defense alone, purchases under $100,000 represent about 98 percent of the procurement actions. Yet those large number of actions represent only about 5 percent of DOD's total procurement dollars. Obviously, by raising the simplified acquisition level to $100,000 we will succeed in eliminating significant paperwork

while capturing the vast majority of procurement actions.

The committees have also developed a number of improvements which will encourage the purchase of commercial products rather than the development of lengthy specifications, cumbersome bidding and evaluation procedures, and other inefficiencies. In 1989, the Subcommittee on Oversight of Government Management, on which I serve as ranking Republican, held a hearing to examine the Department of Defense's need to encourage the Government's purchases of commercially available products rather than relying on requiring suppliers to provide goods and services based on Government-unique specifications in cases where there was an equally comparable product readily available on commercial markets. During this hearing I cited the case of a 15-page oatmeal chocolate-chip cookie specification when the Department of the Army could have easily purchased a comparable cookie at less overall cost from the local grocery store. Although Senator LEVIN and I introduced legislation that was ultimately passed which encouraged DOD's purchase of commercial items, I am pleased that this legislation will extend this idea throughout Government.

Madam President, I am proud to be a cosponsor on this legislation and would like to thank the chairman and ranking minority members of the Governmental Affairs Committee and the Armed Services Committee, and Members of those committees who worked tirelessly to navigate this legislation through the legislative process in an expedious way. This bipartisan effort is a landmark step toward making our Government work better for the taxpayers and I encourage my colleagues to support its passage.

Mr. BUMPERS. Madam President, this afternoon, as the Senate begins consideration of S. 1587, the Federal Acquisition Streamlining Act of 1994, I would like to share with my colleagues my perspectives on this important legislation as chairman of the Committee on Small Business.

I consented to have the Small Business Committee discharged from further consideration of the bill for a number of reasons.

First, S. 1587 was initially drafted and has been revised as a collaborative effort among the Committees on Governmental Affairs, Armed Services, and Small Business. Our committee's staff representative was included throughout the process. Small business views were always considered, and in many cases are included in the package before the Senate today.

Second, many of the key players in shaping and moving forward this legislation are also members of the Committee on Small Business. My friend from Georgia Senator NUNN, chairs our Subcommittee on Government Contracting and Paperwork Reduction. Similarly, Senator LEVIN and Senator LIEBERMAN are both active members of the Small Business Committee and the Governmental Affairs Committees.

And, third, the Vice President has made clear that Senate action on this legislation is an administration priority. The administration sees S. 1587 as the legislative implementation of the National Performance Reviews' recommendations regarding the reinventing of Federal buying practices. Senator BINGAMAN and many of the other cosponsors will recognize S. 1587 as the embodiment of many of the recommendations contained in the 1,400-page report of the Advisory Panel on Streamlining and Codifying Defense Acquisition Laws, established by section 800 of the National Defense Authorization Act for fiscal year 1991.

What is clear is that S. 1587 will make significant changes to the way Government buys and those changes will be felt most profoundly by the tens of thousands of small businesses that constitute the vast majority of firms doing business with the Government. What remains unclear is how many of the bill's changes will be felt by small business contractors. Whether some changes will foster their participation or, in some cases, actually inhibit their participation, is difficult to predict with certainty at this point.

It has been frequently said today that S. 1587 is a procurement streamlining bill, one designed to make the process less complex, and that all amendments should be required to measure up against a streamlining standard. I cannot agree that streamlining or simplifying acquisition is the sole criteria for success.

Streamlining from whose perspective? Procurement streamlining cannot simply mean making it easier for the Government's buyers to go to work each day, by granting them virtually unlimited discretion and hoping that they will do right. Small business owners have long called for simplification of the buying process. Better information about contracting opportunities, solicitations that clearly and accurately describe the Government's needs, adequate time to prepare an offer, timely responses from contracting officers during performance, and prompt payment for services and products have been consistently advocated by small business as their key elements for improving Government contracting.

Most often, however, simplification for the convenience of the procurement bureaucracy is at odds with the practical business needs of the small business community. S. 1587 tries to balance those competing views of procurement simplification, but we have received thoughtful analyses on behalf of the small business community suggesting that more work needed to be done on the version of the bill considered by the Governmental Affairs Committee and Armed Services Committee on April 26.

The small business community has been diligently working on the issue of procurement reform. An informal working group was formed by a broad array of small business associations. The Small Business Working Group on Acquisition Reform includes the three major small business associations, the National Federation of Independent Business [NFIB], the Small Business Legislative Council [SBLC], itself an association of 100 small business associations, and National Small Business United [NSBU]. It also includes the National Association of Women Business Owners [NAWBO] and a diverse group of associations representing minority business enterprise. Among these groups are the Minority Business Enterprise Legal Defense and Education Fund [MBELDEF], the Latin American Management Association [LAMA], the National Minority Supplier Development Council, the National Association of Minority Contractors [NAMC], and the National Center for American Indian Enterprise Development. The Small Business Working Group also includes such different groups as the Independent Defense Contractors Association and the American Gear Manufacturers Association.

They have testified at various hearings on procurement reform conducted by the House Small Business Committee and the House Committee on Government Operations. Representatives of three working group members appeared at one of the hearings jointly conducted by the Committees on Armed Services and Governmental Affairs.

On April 22, our committee staff furnished them the text of the proposed substitute amendment for S. 1587. In 3 days the working group provided to the Committee on Governmental Affairs and the Committee on Armed Services a comprehensive 17-page analysis of the bill expressing serious concerns. When S. 1587 was favorably reported without substantial amendments by the Governmental Affairs Committee on the morning of April 26 and by the Committee on Armed Services that same afternoon, the small business community asked our committee to address their concerns. Although ordered reported on April 26 by the Armed Services and Governmental Affairs Committees, the bill was not actually reported—and thereby referred to the Small Business Committee—until Thursday, May 12. The bill's original referral order provided for our committee to have 20 session days for consideration of the bill.

On Monday, May 23, the new Chief Counsel for Advocacy at the Small Business Administration, Jere Glover, submitted directly to the committee a

special report on this proposal. During the formulation of the administration's positions regarding modifications to S. 1587, which spanned the 5 months of discussions that led to the substitute bill before us today, SBA views appear to have been given little weight in the headlong rush to streamlining. Staff informs me that SBA representatives were not included in the discussion sessions, even when the topic of discussion was being ballyhooed as a benefit for small business government contractors. Given the special confidence that President Clinton reposes in SBA Administrator Erskine Bowles, small business generally has a strong voice at table when the administration formulates its broad economic policies. Small business must also be given a more prominent voice in the fashioning of regulatory policies directly impacting small firms. The Government's approximately $200 billion annual procurement budget is certainly one of those topics where small business deserves to be present and heard at the table. I hope that SBA's Office of Advocacy and its Office of Government Contracting will be more involved.

Madam President, I would ask unanimous consent that the comments by the Small Business Working Group and the special report by the Chief Counsel for Advocacy be printed in the RECORD following my remarks.

Madam President, while we have consented to be discharged before the expiration of our period of referral, I want to assure my colleagues that the concerns raised in the comments of the Small Business Working Group have been carefully reviewed by staff. Many of those concerns are being addressed in the managers' amendments that will be adopted shortly. Others will be addressed in amendments to be offered by members of the committee, including Senator WELLSTONE. To the extent that the bill as passed does not address their concerns, they have my pledge to continue to improve the bill for the benefit of small business during the subsequent conference with the House.

Finally, Madam President, I would like to thank Senator PRESSLER, our ranking Republican member, for his cooperation and assistance in moving this legislation forward.

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

SMALL BUSINESS WORKING GROUP ON PROCUREMENT REFORM

JUNE 6, 1994.

Hon. DALE BUMPERS,
U.S. Senate,
Washington, DC.

DEAR SENATOR BUMPERS: The Small Business Working Group on Procurement Reform wants to take this opportunity to share with you our observations and positions concerning S. 1587, the "Federal Acquisition Streamlining Act of 1994." The Senate is scheduled to consider this bill at 3:30 p.m. on Tuesday, June 7.

Although S. 1587 as reported by the Committees on Governmental Affairs and Armed Services reflects recommendations made by the Working Group in testimony, and there are several additional important improvements in a proposed Managers' Amendment, it is our judgment that we should not endorse this legislation, given that a shift of but a few provisions would tilt it into the category of being a "net loss" for small business. Instead, we would seek to work cooperatively with those who have sought to accommodate small business concerns to fashion further improvements during consideration by the Senate and during the subsequent conference with the House of Representatives.

We do not withhold our endorsement lightly. Procurement streamlining is and has consistently been an objective of the small business community. As we have said previously, true procurement streamlining must simply not make it easier for the Government's buyers to go to work each day, but for private sector business concerns and, especially small business concerns, to be treated fairly in their efforts to sell to their Government. This remains our goal and S. 1587 has been modified to reflect a greater recognition of its legitimacy.

We ask you to give greater recognition to our objectives in procurement streamlining as the bill and proposed amendments are debated by the Senate. Our more specific comments on possible amendments to S. 1587 follow:

(1) Class Waiver of the Applicability of Certain Laws to Subcontractors. S. 1587, as reported, would authorize procurement bureaucrats to waive the application of laws with regard to subcontractors of prime contractors furnishing commercial products. The Small Business Working Group is opposed in principal to the concept of allowing unelected career officials to waive statutes enacted by Congress. If such waivers are truly necessary, Congress, not the bureaucracy, should specify the waivers.

One candidate for application of this waiver authority is of special interest to the Working Group—the requirement for certain subcontractors to have goals for the participation of small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals. As written, the bill prohibits the regulatory waiver of the subcontracting requirements of Section 8(d) of the Small Business Act. We urge you to support Senator Carol Moseley-Braun in her efforts to block any amendment that would change current practice regarding the use of small business concerns as subcontractors and suppliers.

(2) Market Acceptance Criteria. S. 1587 would permit procurement regulation writers to prescribe market acceptance criteria which an offeror would have to meet in order to sell commercial items to the Government. Such market acceptance criteria could be written to foreclose the participation of fully commercial small firms with other than national markets. We do not believe that the proposed change contained in the Managers' Amendment precludes such an abuse. The Working Group believes the bill should prescribe standards for such market acceptance criteria that will not permit the elimination of a firm solely on the basis of its volume of sales. We urge you to support any floor amendment which would specify statutory standards and prohibit the use of volume of sales as a criteria. We also urge you to support any amendment that would make a determination that a small firm had failed to meet a market acceptance criteria a matter subject to review by the Small Business Administration under its Certificate of Competency Program.

(3) Response Times Left to Regulators. S. 1587 would leave to the regulation writers the establishment of the time made available for an offeror to submit a response to a solicitation for a commercial item, a small purchase under the new $100,000 Simplified Acquisition Threshold, or any solicitation made through electronic commerce. The Small Business Working Group is concerned that the regulation writers will allow such response times to be set on a contract-by-contract basis. We urge you to support any floor amendment which would either Congressionally-prescribe, or require that the Federal Acquisition Regulation prescribe, minimum response times.

(4) Simplified Acquisition Procedures and "Micro-Purchases." S. 1587 exempts purchase of $2500 or less from the so-called "Small Business Small Purchase Reserve." This purportedly was done to facilitate broader use of a government credit card to permit non-procurement personnel to make more purchases of commercial items from major retailers, most of which are not small businesses. However, as written, the provision exempts all purchases under $2500. The Small Business Working Group believes that two amendments are appropriate. First, there should be a linkage between the actual use of the government credit card as a precondition to the waiver of the Small Business Small Purchase Reserve. Second, even when the government credit card is used, Congress should require the Federal Acquisition Regulation to admonish government purchasers to try to make use of small businesses "to the maximum extent practicable." We urge you to support any floor amendment that would achieve these two goals.

(5) Procurement Protests: Limitations on Attorneys' Fees. The Small Business Working Group strongly opposes the provisions in S. 1587 which would limit the amounts to which a small business owner would be entitled to recoup for attorneys' fees and expert witness fees upon winning a successful bid protest. Under current law, which has worked since 1984, a successful protestant may be reimbursed for legal costs actually incurred, if the General Accounting Office or the General Services Board of Contract Appeals finds them to be reasonable. The provision would artificially limit the legal fees that could be recouped to the maximum hourly rate allowable under the Equal Access to Justice Act, $75.00 per hour, which has remained unchanged since 1980. Such a limitation would have a chilling effect on the bid protest protections afforded by the competition in Contracting Act of 1984, falling especially hard on small firms. We urge you to support an amendment to be offered by Senator Paul Wellstone that would either strike this unfair limitation completely or eliminate small firms from its chilling effects.

(6) Alternative Disputes Resolution. S. 1587 misses the opportunity to streamline the contracts disputes resolution process by eliminating the government's ability to avoid the use of alternative disputes resolution procedures when such procedures are appropriate. We urge you to support an amendment to be offered by Senator Paul Wellstone which would require that a small business concern be allowed access to ADR procedures unless the contracting officer could cite and justify one of the statutorily-specified circumstances under which current

law deems ADR procedures to be inappropriate.

(7) Fast Pay for Small Purchases. S. 1587, as reported, contains a provision which assures that small firms will receive accelerated payment for performance of contracts awarded under the accelerated procedures to be used for contracts under the new $100,000 Simplified Acquisition Threshold. This provision merely makes mandatory an essentially identical fast pay provision for $25,000 small purchases which Congress adopted on a non-mandatory basis as part of the 1988 amendments to the Prompt Payment Act, but which was never fully implemented. It is the understanding of the Small Business Working Group that the Administrator for Procurement Policy is advocating the elimination or substantial weakening of this provision. We urge you to oppose any effort to do so.

(8) Measuring the Effects of the $100,000 threshold. S. 1587, as reported, also assures the Congress, as well as the small business community, will have concrete and comparable data to permit a valid assessment of the impact on small business concerns, including small business concerns owned and controlled by economically and socially disadvantaged individuals and women, of increasing the small purchase threshold from $25,000 to $100,000. It is the understanding of the Working Group that the Administrator for Federal Procurement Policy is seeking modifications to this provision that essentially will make it impossible to analyze the effect of this dramatic four-fold increase in the small purchase threshold. We urge you to oppose any such amendment.

Enclosed is a copy of our April 25, 1994 Commentary of the bill as it was considered by the Committees on Government Affairs and Armed Services. There were virtually no amendments made at the committee level. Also enclosed is a "Special Report" from The Honorable Jere W. Glover, the recently-confirmed Chief Counsel for Advocacy at the Small Business Administration, whose assessments in many ways mirror the concerns that have been consistently expressed by the Small Business Working Group.

We urge you to review and seriously consider the recommendations by our coalition of associations serving as advocates for small businesses, including those owned and controlled by socially and economically disadvantaged individuals or women.

Please help us to make acquisition streamlining a benefit, rather than a source of new burdens for them.

If you have any questions about this statement, please contact me at 703-684-3450.

Sincerely yours,

E. COLETTE NELSON,
Chair, Small Business Working Group on Procurement Reform.

SMALL BUSINESS WORKING GROUP ON PROCUREMENT REFORM

Small Business Legislative Council.

Minority Business Legal Defense and Education Fund.

Latin American Management Association.

National Center for American Indian Enterprise Development.

National Association of Minority Business.

National Association of Women Business Owners.

National Minority Supplier Development Council.

Women Construction Owners & Executives, Inc.

Independent Defense Contractors Association.

Independent Gear Manufacturers Association.

Interamerican Travel Agents Society.

National Small Business United.

National Federation of Independent Business.

SMALL BUSINESS ADMINISTRATION,
Washington, DC, May 23, 1994.

Hon. DALE BUMPERS,
Chairman, Committee on Small Business, U.S. Senate, Russell Senate Office Building, Washington, DC.

Subject: Report on Procurement Reform.

DEAR MR. CHAIRMAN: This is a report outlining the views of the Office of Advocacy on procurement reform.[1] It is prepared under the authority of 15 USC §634(f) and is intended to echo the concerns of the small business community. The Small Business Legislative Council, the National Small Business United, and the National Association for the Self-Employed agree with the opinions expressed herein.

Currently, Congress has before it a number of reform measures, including S. 1587, H.R. 2238, H.R. 3586, H.R. 4263 and H.R. 4328. Small firms are the engine supporting economic growth as well as the driving force behind job creation and innovation in America. Congressional due diligence in considering these proposals must therefore acknowledge and support the needs of the small business community.

The Office of Advocacy strongly endorses acquisition reform. Few would disagree that our procurement system is too complex, absurdly slow and frequently ineffective. However, the zeal to reform must be tempered with adequate consideration for the concerns of the small business community. It took many years to instill sufficient checks and balances within the federal procurement process to encourage competition and increase opportunities for small, minority and women-owned firms. Some of these checks and balances are now seen as impediments to streamlining the procurement process.

It is important to note that many of the proposed legislative changes come from recommendations made by the Acquisition Law Advisory Panel (Section 800 panel). This panel was established by the 1991 National Defense Authorization Act (Public Law 101-510, Section 800) to review acquisition laws, with a goal of streamlining the Department of Defense acquisition process. Unfortunately, the small business community had minimal representation and input to the panel.

For reform to be meaningful and effective, it must be balanced equitably on all stakeholders. It would be a costly injustice, as well as an exercise in regression, if the small business community were to be sacrificed at the expense of less competition, higher government costs and fewer procurement opportunities for small firms.

We ask that you consider the following concerns in deliberations.

SIMPLIFIED ACQUISITION THRESHOLD

A critical component of the reform legislation focuses on increasing the small purchase threshold from $25,000 to $100,000. We support increasing the threshold if, and only if, specific measures are implemented to protect the small business community and enhance its ability to participate in federal procurement opportunities. These measures include:

Linking any increase in the small purchase threshold with a concurrent obligation to implement a coordinated government-wide electronic equivalent of the *Commerce Business Daily*.

While increasing the threshold will simplify the procurement process, it will hurt small firms if acquisition opportunities are not adequately publicized. If the threshold is increased without directly linking it to the implementation of an electronic commerce system, competition most likely would be minimized and many small firms would be precluded from participating in procurement opportunities. Reduced competition would increase the government's procurement costs.

We support the implementation of the federal acquisition computer network (FACNET) or similar government-wide electronic commerce system.

Maintaining the small business small purchase reserve for purchases of less than $2,500.

Awards to small businesses, especially emerging firms, will be reduced if purchases of less than $2,500 are not reserved. We agree that very small purchases should be easy to make and require minimal paperwork. Small firms can accommodate this need for greater simplicity.

For many small firms, very small purchases are the bread and butter of their operations. These same firms are often not able to compete for large federal acquisitions.

Requiring detailed reporting under the Federal Procurement Data System for any purchase of $10,000 or more.

This requirement is necessary to measure and evaluate the results of increasing the threshold.

Requiring the implementation of fast pay procedures in contracts awarded to small firms under the small purchase threshold.

The Prompt Payment Act Amendments of 1988 give executive agencies authority to implement fast pay procedures for contracts under the small purchase threshold. However, implementing regulations have basically neutered this provision, allowing agencies to avoid compliance.

Fast pay provisions in contracts below the threshold would require small firms to be paid by agencies within 15 days from the receipt of an invoice and require the availability of payment through electonic transfer upon contractor performance. Fast pay procedures, enacted in the Amendments of 1988, should be mandated.

Linking the threshold for small claims procedures to the simplified acquisition threshold.

This would raise the current small claims threshold from $10,000 to $100,000, allowing access to simplified and more efficient claims procedures.

Amending the Davis-Bacon Act, the Services Contract Act and the Miller Act.

The Davis-Bacon Act requires contractors for federal and public works projects to pay workers the local prevailing wage rate, usually union wages. The act was intended to prevent construction companies offering substandard wages from underbidding local companies. The threshold for coverage under the act was set at $2,000 in 1931 and remains the same today.

The Service Contract Act of 1965 has purposes for service contracts similar to those of the Davis-Bacon Act for construction. It applies to contracts in excess of $2,500. It requires contractors to pay the minimum prevailing wage and specified fringe benefits.

The Miller Act requires that for any federal construction contract worth $25,000 or more, the contractor must be bonded.

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[1] The views expressed in this document are solely those of the Chief Counsel for Advocacy and may not necessarily reflect the views of the U.S. Small Business Administration or the Administration.

We urge that the threshold for these laws be increased to $100,000 or the established level for Simplified Acquisition Threshold. Further, we urge that the Federal Acquisition Regulations be modified, with respect to the Miller Act, to provide alternative payment protections for small business subcontractors and suppliers.

COMMERCIAL ITEMS

We support efforts to make a easier for firms to sell, and the government to buy, commercial products for government use. Reliance on commercial items is one of the identified purposes of the Competition in Contracting Act of 1984. We support a clear preference for the use of commercial items and performance specifications. However, aspects of the proposed legislation could be very damaging to small firms.

Broad Definitions for Commercial Items

Proposed definitions for commercial items are excessively broad. Not only do they include items that have been sold commercially, but they also include those which might (or might not) be sold commercially in the future. We are concerned that a firm could use its purported offer of a product to the general public, whether or not there is a commercial market, as a means of avoiding various statutory requirements. Further, some proposals would modify the definition of commercial items to include all forms of commercial services.

If the definition of commercial items were made excessively broad and specific statutory requirements eliminated as proposed, procurement opportunities for small firms would be significantly reduced.

Preserve Subcontracting Plans for Subcontractors

Proposed legislation would free subcontractors supplying commercial items or commercial components for government-designed products from any requirement to utilize small or small disadvantaged concerns as "second-tier" subcontractors and suppliers. We strongly oppose any effort to eliminate subcontracting plan requirements. Such changes in the law would have a significantly adverse effect on the ability of small firms to participate in contract opportunities.

The current law requiring the flow-down of subcontracts to small firms has helped many small, minority and women-owned businesses.

We endorse recommendations of the small business community to make small business and small disadvantaged business participation at the subcontract level a criterion for the award of prime contracts.

Market Acceptance

It is proposed that new procedures for the acquisition of commercial items be developed. We support the development of procedures that provide consistent, government-wide implementation, as opposed to allowing individual agencies to establish their own definition for market acceptance.

Further, implementing regulations that will ultimately define "market acceptance criteria" must be sensitive to the needs and especially the limitations of the small business community. We are concerned that such criteria could be used to set standards beyond the reach of many small firms. For instance, if market acceptance criteria were used as a test for "responsiveness," some firms would be eliminated from competing, before having any recourse to SBA's Certificate of Competency (CoC) program.

The CoC program is a very successful government initiative that has helped many small firms. It would be counter productive to allow the development of procedures that could cancel the intended purpose of the CoC program.

PILOT PROGRAMS

We acknowledge the need for and the advantages of testing and implementing alternative procurement methods. However, we oppose efforts that would grant sweeping authority to specific federal agencies and eliminate long-standing statutory protections for small businesses.

Test Authority

It has been proposed that the Administrator for the Office of Federal Procurement policy (OFPP), in considering procurement pilot programs, be given authority to waive not only regulations, but also laws, by simply giving notice to the Congress. Waivers of statutes should not be so lightly undertaken, and we oppose such blanket authority granted to the Administrator of the OFPP.

If statutory waivers are deemed necessary to conduct a pilot program, specific Congressional approval should be obtained and OFPP should be required to obtain the concurrence of the agency or agencies responsible for the statutes to be waived or suspended.

Defense Acquisition Pilot Program

Proposals would give the Secretary of Defense authority to waive or limit the applicability of specific statutory requirements in implementing the Defense Acquisition Pilot Program. The proposed waivers include eliminating small business set-asides, the small business small purchase reserve, and small and small disadvantaged business subcontracting plans. We oppose these proposals.

The small business programs cited have been established as an integral part of the protections for small businesses. These programs assure those new to the federal procurement environment that opportunities will be made available to them. The gradual elimination of these protections not only removes specific opportunities from the table, but also sends a message that efficiency of administration and convenience of established relationships are more important than helping small firms to grow and participate in the federal procurement process.

EXTENSION OF THE DOD MINORITY ENTERPRISE DEVELOPMENT PROGRAM

Proposals would extend to civilian agencies the minority enterprise development program currently authorized for DoD under 10 U.S.C. 2323 (formerly Section 1207 of Public Law 97-661, the National Defense Authorization Act for 1987). We recommend that the SBA play an integral role in the development and oversight of an extended Minority Enterprise Development Program.

CONTRACT GOALS

We support increasing the government-wide goal for participation by small business concerns for 20 percent to 25 percent of the total value of all prime contract awards for each fiscal year. Further, we support establishing a goal for the participation of women-owned businesses at 5 percent of the aggregate value of all prime contracts.

BEST-VALUE CONTRACTING

Best-value practices are intended to help government agencies receive the best overall value in contracts it awards. Under such practices, contracts are awarded by considering a combination of price and technical factors, with technical factors taking precedence. The concept removes the super preference for low-bid proposals and puts best-value negotiated solicitations on equal footing with sealed bid solicitations.

We support the intended purpose of best-value practices, but are concerned with the level of subjectivity such practices provide to contract officers in weighing individual evaluation factors. We recommend that any effort to broadly incorporate the use of best value practices include specific provisions that would clarify evaluation factors, specify weighing procedures and minimize subjectivity.

TRUTH IN NEGOTIATIONS ACT

The Truth in Negotiations Act (TINA) requires contractors to submit cost or pricing data before the award of a contract or a contract modification that is expected to exceed $500,000. Similar requirements are imposed on subcontractors, who must submit such data to the prime contractor. Current law stipulates that the $500,000 threshold be reduced back to the 1984 level of $100,000 after December 31, 1995. We support proposals to keep the TINA threshold at $500,000.

PAST PERFORMANCE PRACTICES

Proposals would alter regulations that require federal agencies to consider a contractor's past performance in awarding future contracts. We are concerned that such practices could impede the ability of small firms, especially minority and women-owned businesses, to obtain federal contracts. This is because most small firms have limited experience in the government market place.

We recommend that any provisions to consider past performance in the evaluation process include specific measures to consider both commercial and federal past performance; include recognition of a firm's compliance with its subcontracting obligations under Section 8(d) of the Small Business Act and clearly acknowledge that a company would not be penalized if no information regarding past experience was available.

TECHNICAL DATA RIGHTS

In addition to pending procurement reform legislation, Congress is considering recommendations prepared by the DoD/Industry Technical Data Advisory Committee (Section 807 committee).

The 807 committee is charged with preparing recommendations that will lead to the development of technical data regulations that are equitable to all federal contract participants in the creation and use of technic .l data. This is a powerful issue, charged with controversy and fueled by different agendas. Although the committee sought consensus among divergent groups, its recommendations appear to side with the interest of predominantly large firms.

A key recommendation made by the committee is that data rights be determined based upon whether development is charged to DoD as a direct or indirect charge, rather than whether it is paid for by the DoD. In the interests of small business, greater competition and reduced government costs, we urge that all data paid for by the taxpayer be available for competitive purposes, irrespective of whether it is charged to the government as a direct or indirect cost. Further, we urge that careful consideration, as well as a comprehensive analysis of the projected impact on small manufacturers, be undertaken before technical data regulations are changed.

Procurement reform is desperately needed and should be vigorously pursued. We strongly endorse efforts to simplify and streamline the procurement process. However, reform must be equitable and not carried on the back of the small business community.

The Office of Advocacy shares the commitment of the Congress to make meaningful reform a reality and stands ready to work with it in that endeavor.

Sincerely,

JERE W. GLOVER,
Chief Counsel,
Office of Advocacy.

SMALL BUSINESS WORKING GROUP ON PROCUREMENT REFORM

April 25, 1994.

Hon. JOHN GLENN,
Chairman, Committee on Governmental Affairs, U.S. Senate, Washington, DC.
Hon. WILLIAM V. ROTH, Jr.,
Ranking Republican, Committee on Governmental Affairs, U.S. Senate, Washington, DC.

DEAR CHAIRMAN GLENN AND SENATOR ROTH: The undersigned members of the Small Business Working Group would like to take this opportunity to offer comments regarding the April 21, 1994 proposed Amendment in the Nature of a Substitute to S. 1587, the "Federal Acquisition Streamlining Act of 1993."

In reviewing your proposal, we have sought to measure it against several broad criteria and to determine the extent to which it reflects the specific recommendations contained in testimony that members of the Small Business Working Group presented at the joint hearings conducted by the Committees on Armed Services and Governmental Affairs.

Small business firms, including those owned and controlled by socially and economically disadvantaged individuals or women, have substantial demonstrated capabilities to participate in the federal acquisition process as prime contractors, subcontractors and suppliers. Their participation not only benefits the government and other government prime contractors, but the Nation's economy at large. It is our view that any proposal for streamlining federal acquisition concurrently must avoid creating any new impediments and eliminate identified existing impediments to small business participation in the government marketplace. Streamlining must not simply be from the perspective of the Government buyer; it also must emphasize the business realities and the right to fair treatment of those selling to the Government, especially small business concerns.

Our review of the proposed Committee Amendment led us to conclude that it does not yet strike this balance. Thus, we cannot yet express support.

The attached document summarizes many of our concerns. We would have liked to have provided more comprehensive comments on the 311-page proposal, acknowledging more of its positive features, but did not obtain a copy until late Friday, April 22. Nonetheless, we wanted to provide some comments prior to the mark-ups scheduled for 10:00 a.m. on Tuesday, April 26, before the Committee on Governmental Affairs, and before the Committee on Armed Services at 2:30 p.m. on the same day.

This letter highlights several of our more critical concerns.

First, we are particularly concerned with those provisions of the Committee Substitute which would statutorily authorize the Federal Acquisition Regulatory Council to waive the application of any law with respect to subcontractors to firms furnishing commercial items to the Government or to subcontractors furnishing commercial components to non-commercial products. Clearly, this is a back-door way of eliminating the current statutory requirements under Section 8(d) of the Small Business Act, for subcontracting with small businesses and small business concerns owned and controlled by socially and economically disadvantaged individuals. This same waiver authority could be applied with regard to a broad range of otherwise applicable statutory requirements to the detriment of the public interest as defined by Congress.

Our concern is compounded by the broad definition of "commercial items" which includes not only items actually being sold in the commercial marketplace, but still unbuilt items that are "not yet available in the commercial marketplace" but need only be intended for commercial sales "within a reasonable period." Our concern about the broad effect of a sweeping waiver authority tied to such a broad definition only is compounded further by our understanding that the House Armed Services Committee substitute for H.R. 2238 defines "commercial items" to include "commercial services," which essentially are all services under the expansive standards in both bills.

Such radical, and likely limitations on subcontracting opportunities look even more egregious in light of the other provisions of the proposed Committee Substitute which encourage contract bundling. Such contract bundling creates contracting opportunities beyond the capabilities of even the most developed small business concern.

Essentially, these provisions relegate most small business concerns, and small business concerns owned and controlled by socially and economically disadvantaged individuals or women to the so-called "simplified acquisition" market (i.e., contracts below $100,000).

But the Committee Amendment even endangers their potential for success in the $100,000 and less small purchase market. Far too many of the key details of what will constitute acceptable "simplified acquisition procedures" are left to the not-so-tender mercies of the procurement regulation writers. Past experiences have demonstrated repeatedly that the regulation writers are all too willing to sacrifice our business needs, and even our rights, for the convenience of the Governments buyers, whenever given the opportunity by imprecise statutory direction. We urge you to keep in mind that approximately 98 percent of the Government's contracting opportunities will be governed by these "simplified acquisition procedures."

In essence, the legislation embodied in the proposed Committee Amendment, if maliciously implemented by the regulation writers, could mean that small business concerns will get to observe the government market rather than participate in it, except to the extent that their tax dollars make a substantial contribution to funding government purchases.

We urge you to review and seriously consider the recommendations by our coalition of associations serving as advocates for small businesses, including those owned and controlled by socially and economically disadvantaged individuals or women. Many of us have worked with you for years and frequently have heard you discuss the contributions made by all small businesses.

Please help us to make acquisition streamlining a benefit, rather than a source of new burdens for them.

If you have any questions about this statement, please contact Colette Nelson at 703-684-3450.

Sincerely yours,

Small Business Legislative Council; Minority Business Enterprise Legal Defense and Education Fund; Latin American Management Association; National Center for American Indian Enterprise Development; National Association of Minority Business; National Association of Women Business Owners; National Minority Supplier Development Council; National Association of Minority Contractors; Independent Defense Contractors Association; American Gear Manufacturers Association; Interamerican Travel Agents Society; National Small Business United; National Federation of Independent Business.

SMALL BUSINESS WORKING GROUP COMMENTARY ON PROPOSED AMENDMENT IN THE NATURE OF A SUBSTITUTE TO S. 1587, THE FEDERAL ACQUISITION STREAMLINING ACT OF 1994

ACQUISITION OF COMMERCIAL ITEMS (TITLE VIII)

Title VIII of the proposed Committee Substitute focuses on the acquisition of commercial items, a core element of the acquisition streamlining proposal. As we stated in our testimony at the joint hearings of the Committees on Armed Services and Governmental Affairs, the Small Business Working Group supports substantially in creasing the government's acquisition of commercial products. However, the provisions of the proposed Substitute raise a number of very serious concerns.

Class Waiver of the Applicability of Certain Laws to Subcontractors

Section 8004 of the proposed Substitute adds a new section 35 to the Office of Federal Procurement Policy (OFPP) Act that would permit the career regulation writers to waive existing law with respect to a subcontractor (at any tier) for a commercial item or a subcontractor furnishing a commercial component for a government-designed product.

This provision, in our opinion would invite the elimination of any requirements that subcontractors make use of small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals as lower-tier subcontractors or suppliers. We believe it is designed to eliminate current statutory requirements for the use of such subcontractors as specified by section 8(d) of the Small Business Act. Foreclosing small business concerns and disadvantaged small business concerns from the subcontract market is especially unacceptable in light of other provisions of the bill which would explicitly encourage the acquisition of products through so-called bundled contracts unsuitable for award to even the most developed and accomplished small business.

Private sector proponents of this provision maintain that vendors of commercial products or those furnishing commercial components should not be required by government action to disturb their existing subcontractor or supplier base. This argument is inadequate for a number of reasons.

First, the core Congressional purpose in enacting requirements for the use of small business concerns and especially disadvantaged small business concerns at the subcontractor and supplier level was precisely to encourage the disruption of existing supplier relationships. Such existing relationships all too frequently exclude the participation of small businesses and disadvantaged small businesses.

Second, the assertion that such a waiver is necessary to permit the government's acquisition of commercial products flies in the

face of substantial experience. During the 15 years since the enactment of these subcontract participation provisions as part of Public Law 95-507, the government successfully has acquired a broad range of items that unquestionably are commercial in nature. One merely needs to cite the fact that civilian and military agencies acquire commercial copying equipment, commercial vehicles, commercial audiovisual equipment, commercial food service equipment, commercial construction equipment, commercial computer equipment, commercial communications equipment, to name but a few types of truly commercial products that today can be found in use throughout the government. We would submit that it is those who would seek to bring in other items that fit within the extremely broad definition of commercial items included in this legislation that are the principal advocates of this effort to exclude small business participation at the subcontract level.

We find it ironic that the very same companies that are urging upon Congress the elimination of any requirement to use American small businesses as subcontractors and suppliers because such would be incompatible with commercial buying practices, frequently fiercely outbid each other in the amount of offsets being offered in overseas sales to foreign governments, government-controlled corporations or major foreign commercial customers. These offsets essentially require these U.S. multinational corporations to make countervailing purchases from the entity to which they are seeking to make the sale of the U.S product. Frequently, these offset requirements will compel the U.S. manufacturer to incorporate components manufactured by small business concerns in the nation in which the U.S. firm is making the sale or to purchase other products from small firms in that country. With increasing frequency, these offset requirements result in the exporting of manufacturing opportunities currently held by small U.S. firms.

The Small Business Working Group urges the Congress to respond by establishing requirements that make the use of small business as subcontractors and suppliers a major factor in the award of prime contracts for commercial items as well as other items. Such a requirement would overcome the diminished impact of existing subcontract requirements which are negotiated with the successful offeror after contract award. By making the use of American small businesses an important element in the award of the contract, such a provision would harness the fierce competition for the award of U.S. government contracts to the benefit of U.S. small business concerns and disadvantaged small business concerns. To be truly effective, the provision should not only make the consideration of small business and disadvantaged small business participation an evaluation factor in the contract award process, it also should establish minimum percentages of small business and disadvantaged business participation in order for an offer from a major firm to be considered as responsive to the government's solicitation. Our foreign trading partners do no less for their small businesses in their acquisition of commercial and other government-unique products. The Small Business Working Group believes it is time for the United States Government to adopt similar requirements for the benefit of U.S. small business concerns.

In addition to this obvious objection to section 8004, the Small Business Working Group is very concerned about statutorily according to the Federal Acquisition Regulation (FAR) writers authority concerning the applicability of an unknown list of statutes. As we have previously testified before the Congress on many occasions, the small business community has been ill-treated by federal procurement bureaucrats whenever excessive flexibility has been granted in the statutes. This would be one of the broadest grants of statutory waiver authority afforded to the Executive by the Congress without any certitude regarding what laws would be affected. We strongly urge the Committees to demand a comprehensive list of the statutes that could potentially be affected before even considering the grant of such authority.

Second, with such a list in hand, we would urge the Congress to adopt an alternative approach of enacting appropriate waivers of subcontractor flow-down requirements for commercial items, as it has done with respect to the application of other laws to prime contract award for commercial items and with respect to laws applicable to the award of contracts below the Simplified Acquisition Threshold.

Market Acceptance Criteria

Section 8003 of the proposed Substitute calls for the implementation of the new procedures for the acquisition of commercial items through the government-wide Federal Acquisition Regulation. The Small Business Working Group applauds such consistent government-wide implementation, as opposed to the fragmented implementation being proposed in the House Armed Services Committee substitute to H.R. 2238.

One of the key topics to be addressed in the regulations would be the establishment of "market acceptance criteria", with which an offeror would have to demonstrate compliance in order to have its offer considered responsive. This is a grave concern for at least three reasons.

First the proposed Substitute provides no constraints on how the regulations shall define "market acceptance criteria." Our concern is that the regulations could confer on a contracting officer the authority to establish an amount of previous commercial market sales that would be so large as to exclude small commercial suppliers with fully commercial, but limited markets, thus reserving the awards for only the very largest multinational suppliers.

Second, market acceptance criteria adopted by regulation could eliminate participation by so-called contract manufacturers who manufacture products to the specifications of their customers, whether government agencies or private enterprises. Such contract manufacturers would be unable to demonstrate substantial sales to the general public, if that were adopted as the applicable market acceptance criteria.

Third, the Small Business Working Group is concerned that market acceptance criteria could be made a condition precedent for an offer to be considered "responsive." This is the approach taken by the House Armed Services Committee Substitute to H.R. 2238. Such an approach would be detrimental because recognizing market acceptance criteria as a matter of responsiveness would exclude any small firm from seeking from the Small Business Administration (SBA) an impartial evaluation of its status as a commercial supplier. This approach seems designed to eliminate recourse to the Certificate of Competency Program authorized by the Small Business Act. We believe that the SBA would be no less well-suited than the procuring agency to determine whether a small business concern meets specified market acceptance criteria.

The Small Business Working Group is pleased to note that the proposed Committee Substitute would protect the participation by firms currently furnishing products exclusively to the government in response to detailed design specifications.

Inapplicability of Certain Provisions of Law to the Acquisition of Commercial Items

Section 8005 of the proposed Committee Substitute would restrict the application of certain existing laws with regard to the award of contracts for the procurement of commercial items. Specifically, Section 8005(a)(4) would limit the application of the existing statutory prohibition on a government prime contractor limiting the right of one of its subcontractors to make sales directly to the government. The language in the proposed Substitute would not restrict the prime contractor from limiting the right of a subcontractor to sell to the government if such prime contractor limited the right of direct sales by subcontractors with respect to commercial customers. The Small Business Working Group is opposed to any weakening of the sound Congressional intent regarding prohibiting prime contractors from inhibiting subcontractors' sales to the government.

Response Times for Solicitations for Commercial Items Left to Regulators

Section 8006 of the proposed Substitute would leave to the Federal Acquisition Regulation the establishment of the time made available for an offeror to submit a response to a solicitation for the procurement of a commercial item. Under current law, an offeror must be accorded at least 30 days to fashion an offer in response to a government solicitation for the acquisition of a product.

While the Small Business Working Group recognizes that less time might routinely be needed to fashion an offer for furnishing a commercial item, it steadfastly is opposed to a blanket grant of authority to the regulation writers. The 1984 statute, which prescribed minimum response times for the submission of offers, was necessitated by the fact that government buyers were specifying unreasonably short response times to the extreme detriment of small business offerors. The Small Business Working Group can think of no reason why the natural propensities of the acquisition workforce would have changed. Therefore, some statutory minimums are necessary to avoid a reoccurrence of the abuses that necessitated Congressional action in 1984.

SIMPLIFIED ACQUISITION THRESHOLD (TITLE IV)

Section 4001 of the proposed Substitute would replace the small purchase threshold with a new Simplified Acquisition Threshold and increase it from $25,000 to $100,000. The Small Business Working Group notes that the Substitute does not adopt the Administration's recommendation that the Simplified Acquisition Threshold be indexed for inflation.

Simplified acquisition procedures and "Micro-Purchases"

Section 4011 of the proposed Substitute would add a new Section 29 to the OFPP Act. This provision directs the issuance of regulations specifying appropriate "simplified acquisition procedures." In addition, this provision would call for the regulatory establishment of a new class of purchases referred to by the Clinton Administration as "Micro-Purchases."

Under such Micro-Purchases, the requirement of Section 15(j) of the Small Business Act would be waived. Under current law, purchases below the small purchase threshold initially are reserved for competition exclusively among small business concerns, if certain conditions are met. Under the proposed Committee Amendment, this "Small Business Small Purchase Reserve" would be eliminated with respect to purchases below $2,500.

The Micro-Purchase threshold is being strongly advocated by the Clinton Administration to facilitate the use of government credit cards for the making of low dollar-value purchases. In its view, the Small Business Small Purchase Reserve makes this "reinvention" initiative impossible.

The Small Business Working Group believes that the waiver of the Small Business Small Purchase Reserve only should apply if a purchase actually is to be made through the use of the government credit card. Further, it does not seem incompatible to require the individuals making such Mirco-Purchases be required to use small business concerns "to the maximum extent practicable." Such a statutory admonition would make clear that the Micro-Purchase Threshold is not an invitation to avoid small business participation when such firms are available and can meet the government's needs in a timely and cost effective manner.

Acceptance of timely offers

The Small Business Working Group also urges that the new Section 29 of the OFPP Act relating to Simplified Acquisition Procedures be amended to include a specific provision making explicit that a timely offer for a contracting opportunity in excess of $2,500 but less than $100,000, timely received from a small business must be considered for award. This recommendation is made with the understanding that the Committee Substitute includes a similar provision in Section 4012, amending Section 15(j) of the Small Business Act. Statutory redundancy in the favor of small business is not a fault, given the propensities of the regulation writers.

Small Business Reservation

Section 4012 of the proposed Substitute would increase to the Small Business Reserve to the $100,000 Simplified Acquisition Threshold. The Small Business Working Group commends the Committees for this action and reiterates that such linkage in a principal condition for the Working Group to support any increase in the current $25,000 small purchase threshold, which was only last increased from $10,000 in 1986.

Fast Pay Procedures Under Simplified Acquisitions

Section 4013 of the proposed Substitute would require fast pay procedures as part of the Simplified Acquisition Procedures to be developed pursuant to the new Section 29 of the OFPP Act. The Small Business Working Group commends the Committees for making mandatory the fast pay procedures enacted in a permissive format as part of the 1988 Amendments to the Prompt Payment Act. We note that the procedures only call for accelerated payment for products delivered or services performed. Representatives of the Department of Defense have sought to undermine the adoption of fast pay procedures by linking them to former practices that called for payment prior to contractor performance.

Electronic Commerce

Section 4015 of the proposed Substitute addresses the development and implementation of an electronic commerce system for the federal government. The text of the provision essentially paraphrases the presidential memorandum of October 1993, relating to the establishment of an electronic commerce system.

The Small Business Working Group commends the Committees for including in the Committee Substitute the provision that addresses what the Working Group considers to be essential elements of an acceptable system of electronic commerce. First, the provision recognizes that the system should cover the entire procurement process from solicitation of offers to payment of the contractor for work performed. Second, it makes clear that the system must be designed around the objective of making it "user friendly" to small business concerns, including small business concerns owned and controlled by socially and economically disadvantaged individuals or women. Finally, it recognizes that a successful system will have to present a "single face" to all industry.

The Substitute, however, does include some very serious deficiencies which the Small Business Working Group maintains must be addressed. First, the Committee Substitute continues the common problem of according excessive discretion to the regulation writers to fashion the details of the standards regarding advanced notice of contracting opportunities, the content of such notices, and response times for solicitations under electronic commerce. As drafted, the provision essentially is devoid of any Congressional standards upon which to measure whether the resulting regulations in fact accord a "reasonable opportunity to respond."

The Small Business Working Group strongly urges that the provision be amended in a number of key respects. First, minimum advance notice periods with respect to contracting opportunities should be included. A time period less than the currently-mandated 15-day advance notice period prior to the release of a solicitation would seem warranted in an electronic commerce environment. However, an advance notice period of less than five days would seem to demand greater practical experience than that derived from the ongoing experiments with electronic commerce within the Department of Defense.

Second, the Small Business Working Group believes that the contents of a notice announcing a contracting opportunity essentially should be comparable to those required by Section 8(f) of the Small Business Act for a notice to be published in the Commerce Business Daily. Currently, the Committee Substitute reflects no statutory standard.

Third, the Small Business Working Group believes that the statute should specify a minimum time in which competing offerors may develop their offers. Under current law, for procurements in excess of the $25,000 small purchase threshold, an offeror is assured 45 days to fashion a response to a solicitation for a research and development contract, and 30 days for a solicitation for a contract for products and non-R&D services. These minimum response times were put in place to assure small firms adequate time to respond to solicitations. They were enacted because the contracting community routinely was utilizing response times that effectively foreclosed the participation of small firms. While the Small Business Working Group recognizes that 30- or 45-day response times may be excessive in an electronic environment, we would urge that minimum response times of not less than 15 and 10 days be specified in the statute. Adjustments can be made based upon experience, but Congress should not be excluded, given the past performance of the procurement bureaucracy.

Enhanced Data Collection Regarding Purchases Below $100,000

Section 4001(b) of the proposed Substitute adopts a form of enhanced reporting requirements recommended in our testimony. This will assure that Congress and the small business community will have hard data to measure the actual effects of simplified acquisition procedures and whether they result in more small business participation as is being touted by the Clinton Administration.

Unfortunately, the provision did not adopt our specific recommendation that detailed reporting should apply with respect to awards of at least $10,000 rather than the $25,000 floor reflected in the provision. In 1986, when the small purchase threshold was increased from $10,000 to $25,000, we lost sight of these hundreds of thousands of business opportunities. Apparently, the procurement bureaucracy thus far has made a convincing case that such information isn't needed. We don't agree.

Statutory Waivers under SAT

The proposed Committee Substitute sets forth a list of statutes which shall not be applicable to acquisitions below the Simplified Acquisition Threshold. We recognize this as an important step in decreasing the burdens on small business concerns to win these contracting opportunities.

In particular, we note that the proposed Substitute adopts our recommendation that the Miller Act threshold be increased to the Simplified Acquisition Threshold and that the FAR be modified to provide alternative payment protections for the benefit of subcontractors and suppliers, who most frequently are small business concerns.

We would note that the proposed Substitute does not propose any increase in the existing $2,000 threshold for the Davis-Bacon Act of 1933 or the $2,500 threshold for the Service Contract Act of 1965. A simple increase to $100,000 is warranted even if one simply considers an adjustment for inflation. The Small Business Working Group believes that increases in these thresholds are essential if the full benefits of simplified acquisition procedures are to accrue equally to the small business seller as to the government buyer. At the same time, we strongly oppose any effort to expand the coverage of the Davis-Bacon Act or the Service Contract, as proposed by the Clinton Administration and others.

We further note that the Davis-Bacon Act carries with it not only obligations concerning prevailing wages, but the collateral requirements of the Copeland Act regarding the submission of weekly payroll data. We believe this burdensome and unnecessary paperwork requirement properly should be replaced with a certification requirement. At an absolute minimum, this reporting threshold should be increased to $100,000. Otherwise, we have another example of the Simplified Acquisition Threshold being principally a benefit for government contracting officers.

Walsh-Healey Act Repealer

Section 4012(c) of the proposed Committee Substitute would amend the Walsh-Healey Public Contracts Act, effectively repealing all provisions except those which authorize the Secretary of Labor to prescribe regulations for determining whether a contractor is a manufacturer of, or a regular dealer in,

the items of supply to be used in the performance of a government contract. The Small Business Working Group suggests that consideration be given to limiting the application of any regulations regarding a vendor's status as a manufacturer or regular dealer to contracts in excess of the Simplified Acquisition Threshold.

Extension of DoD Section 1207 Program to Civilian Agencies

Section 4104 of the proposed Committee Substitute would amend section 8(c) of the Small Business Act to extend to the civilian agencies the minority enterprise development program currently authorized for DoD under 10 U.S.C. 2323 (formerly Section 1207 of Public Law 97-661, the "National Defense Authorization Act for Fiscal year 1987"). Section 801 of Public Law 102-484, the "National Defense Authorization Act for Fiscal Year 1993" codified the former Section 1207 and extended it to the year 2000. Given this strong expression of Congressional support, this action would extend it to the remaining 35 percent of the Government's procurement activity conducted by the civilian agencies.

The provision includes the directions found in 10 U.S.C. 2323(g) calling for the issuance of appropriate guidance to assure that the application of the preferential procurement tools does not foreclose the participation of small business concerns generally in any industry category.

We would observe that, unlike the House Armed Services Committee Substitute for H.R. 2238,the proposed Substitute to S. 1587 would avoid duplicating the existing goal-setting and reporting requirements of section 15(g) of the Small Business Act. Further, we would observe that, unlike the House Armed Services Committee Substitute for H.R. 2238, the proposed Substitute to S. 1587 ensures consistent government-wide implementation through the FAR.

CONTRACT FORMATION (TITLE I)

Limitations on Competition

At the request of the Clinton Administration, Sections 1002 and 1052 of the proposed Committee Substitute would add a new justification for limiting competition. The provision would allow the exclusion of otherwise eligible sources if it would "ensure a continuous and reliable source; satisfy a critical need for health, safety or other emergency supplies; or satisfy projected needs resulting from a history of high demand for the supply or service". It is our opinion that the majority of these circumstances could be justified under the existing statutory exceptions to full and open competition provided in the 1984 Competition in Contracting Act. The open-ended standard sets forth in the proposed new exception, absent definition of key terms, essentially would convey upon a contracting activity the right to restrict competition in almost any circumstance. The Small Business Working Group is opposed to this provision.

Expansion of the Use of Task Order Contracts for Advisory and Assistance Services

Section 1004 and 1054 of the proposed Substitute would add a new Section 2304a to Title 10 and a new Section 303H to the Federal Property and Administrative Services Act of 1949 encouraging the use of task order contracts for the acquisition of advisory and assistance services. The Small Business Working Group is concerned that this provision would only further encourage the bundling of contract requirements so that small business concerns would effectively be unable to compete. To overcome the adverse effects of such contract bundling, the Small Business Working Group encourages the Committees to make subcontract participation by small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals a substantial factor in the award of such contracts.

The Small Business Working Group also notes that the provisions would eliminate the notice required by Section 8(e)(1)(c) of the Small Business Act which requires the publication of the Commerce Business Daily notice if the award of an order would result in subcontracting opportunities for small firms. The waiver of this notice requirements only exacerbates our concerns with the expanded use of task and delivery order contracts.

Two-Phase Selection Procedures

Section 1017 of the proposed Committee Substitute would amend chapter 137 of Title 10, United States Code, which sets forth the procurement procedures generally applicable to the Department of Defense, the Coast Guard, and NASA, by adding a new section 2305 specifying Two-Phase Selection Procedures. Section 1067 would establish parallel procedures applicable to the other civilian agencies under the new Section 303I of the Federal Property and Administrative Services Act of 1949.

The procedures would be used in instances in which a contractor was being selected to both design and produce (or construct, in the case of construction) an item or property. The statutory provision sets forth broad standards for the use of the procedures, as well as very broad procedures regarding the solicitation and award of the resulting contracts.

We are concerned about the new two-phase procedures for a number of reasons.

First, it authorizes the procuring agency to initially screen the proposal of any interested offeror on the basis of evaluation criteria that specifically exclude either cost or price information. It is reasonable to assume that procurement agencies will make use of evaluation criteria focusing on the extent of prior experience and past government performance. Such evaluation criteria will work to the detriment of new entrants, likely to be small business concerns and especially small businesses owned and controlled by socially and economically disadvantaged individuals or women.

Further, it is unclear whether the non-price/cost evaluation criteria must comply with the more specific evaluation criteria added by section 1101 (pertaining to Title 10) or 1061 (pertaining to title 41, governing the civilian agencies, except NASA). If the new Two-Phase Selection Procedures were free of such requirements, it would only compound the concerns of the Small Business Working Group.

Finally, the relationship of the proposed Two-Phase Selection Procedures on the acquisition of construction and the existing statutory preference for the use of the sealed-bid method of source selection remains unclear. Similarly, it is unclear what its effect is on the acquisition of architect-engineer services pursuant to the qualifications-based source selection procedures pursuant to Title IX of the Federal Property and Administrative Procedures Act of 1949, despite the savings clause in Section 8008(2) of the proposed Substitute.

Considering Contractor Past Performance in Contract Awards

Section 1091 of the Committee Substitute would amend the OFPP Act by including requirements for the consideration of a contractor's past performance in the award of future government contracts.

The Small Business Working Group is concerned that the implementation of past performance criteria easily could be structured to become an additional obstacle for the participation of small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals or women. Such firms frequently have a limited track record in the government marketplace. While the provision as drafted does recognize that the consideration of past performance should not work to the detriment of a firm for which there is no information regarding past performance, we believe this simple admonition may be inadequate.

Further, the provision, as drafted, seems to provide no opportunity for consideration of successful (or unsuccessful) past performance in the commercial marketplace. Given the bill's central theme of increasing the participation of commercial products vendors, this deficiency should be remedied.

In addition, we recommend that the measures of past performance include recognition of a firm's compliance with its subcontracting obligations under Section 8(d) of the Small Business Act.

Finally, the equity of any effective system for the use of past performance in source selection decisions is totally dependent upon the accuracy of the processes to collect accurate information on past performance. The Small Business Working Group believes that these concerns must be addressed if past performance evaluation criteria are not to become another substantial obstacle to the participation of small firms in federal government opportunities.

Cooperative Agreements to Procure R&D

Section 1301 of the proposed Substitute would modify existing law regarding the use of grants, cooperative agreements, and "other transactions" for the acquisition of research projects in the field of basic and applied research development relating to weapons systems and other military needs. The Small Business Working Group especially is pleased that the proposed Committee Substitute did not extend these authorities to the civilian agencies, and note their questionable effects when used by DoD.

Section 1301 of the House Armed Services Committee Substitute for H.R. 2238 would add a new section 311 to the Federal Property and Administrative Services Act of 1949, regarding the use of cooperative agreements and "other transactions" for the acquisition of "basic applied and advanced research." Under current law, only the Advanced Research Projects Agency (ARPA) (formerly the Defense Research Projects Agency) and other designated activities of the Department of Defense have authority to use cooperative agreements and "other transactions" to obtain what often is called "precompetitive research" to meet critical national defense needs. Such grants-type authority puts award and administration of such agreements outside of the normal procedures and protections applicable to procurement contracts. The subject provision would extend this sweeping and potentially dangerous new authority to all of the executive agencies. The Small Business Working Group is strenuously opposed to the general extension of such authority for anything falling within the very broad (and undefined) categories of "basic, applied, and advanced research projects."

Our opposition is founded upon the basis that if such so-called "advanced research"

were awarded through a cooperative agreement, none of the following statutes, among others, would apply: the competition and bid protest procedures under the Competition in Contracting Act 1984; the disputes resolution procedures of the Contracts Disputes Act of 1978; the participation of small businesses as prime contractors or subcontractors under the Small Business Act; the payment protections accorded by the Prompt Payment Act; and the various integrity statutes designed to deter unacceptable behavior on the part of government officials and private sector individuals. Even ARPA has been unable to specify what "other transactions" are, no less point to any body of regulatory procedure for their award and administration.

Procurement Protests

Sections 1403 and 1435 of the proposed Committee Substitute would limit the rate of compensation for attorneys and expert witnesses in the bid protest arena. One of the hallmarks of the 1984 Competition in Contracting Act was the strengthening of the rights of an aggrieved vendor to challenge actions by procurement officials that were perceived to be contrary to law or regulation. The bid protest system at the General Accounting Office was made into a forum that could provide a real remedy to today's abuse as opposed to merely an admonition to the agency that an improper action should not be repeated in a future procurement. Even more potent was the vesting of bid protest authority in the GSA Board of Contract Appeals for a range of procurements relating to the acquisition of automatic data processing equipment. Since that enactment, the procurement bureaucracy has worked steadily to fashion means, direct or indirect, to strip the public of these protections.

Unfortunately, the proposed Committee Substitute retains a provision of S. 1587 that would reduce the effectiveness of the bid protest remedies accorded to the contractor community by the Competition in Contracting Act. Section 1403 would limit the rate of compensation of attorneys' fees and expert witnesses in GAO bid protest proceedings to the rates available under the Equal Access to Justice Act (EAJA). Section 1435 would make a parallel limitation to the attorneys' fees and exert witnesses cost that could be awarded to the protester winning at the GSA Board of Contract Appeals.

The EAJA has been weakened by judicial interpretations regarding the standard under which the government is liable for attorneys' fees, as well as by the low fees authorized under the Act. In the opinion of the Small Business Working Group, Congress should be focusing on revitalizing the EAJA and not be about the business of exporting to the bid protest systems one of the limitations that has rendered the EAJA essentially impotent. We urge in the strongest possible terms that Sections 1403 and 1435 be eliminated prior to the enactment of this legislation.

Cooperative Purchasing

At the request of the Clinton Administration, the proposed Committee Substitute includes Section 1554 relating to cooperative purchasing. Under this provision, states, units of local government and special purpose governmental agencies would be able to avail themselves of the Federal Supply Schedules and other indefinite quantity/indefinite delivery contracts negotiated by the Administrator of General Services.

Unfortunately, the provision permits qualified nonprofit agencies for the blind and other severely handicapped operating under the authority of the Javits-Wagner-O'Day Act to avail themselves of these same sources of supply to obtain materials needed for the performance of their contracts with the federal government. The small business community consistently has expressed its concern with the unfair competition provided by these not-for-profit entities. This section 1554 only would make these not-for-profit entities a more substantial threat to small firms with whom they compete in the federal procurement market. The Small Business Working Group urges deletion of this element of the new provision relating to cooperative purchasing.

CONTRACT ADMINISTRATION (TITLE II)

Contract Financing

Section 2001 would add a new Section 2307 to Title 10 of the United States Code relating to contract financing. Section 2051 makes a parallel amendment to the Federal Property and Administrative Services Act of 1949 by amending Section 305 of that Act. Section 2051 contains an explicit provision relating to the Congressional intent that the revised section not impair or modify the payment procedures or protections accorded by the Prompt Payment Act, as codified at Chapter 39 of Title 31. Unfortunately, Section 2001 does not contain a similar provision. The Small Business Working Group strongly urges that during markup, Section 2001 be amended to correct this very serious deficiency.

Acceptance of Audits by Other Agencies

Sections 2201 and 2251 would partially adopt the recommendation by the Small Business Working Group that a contracting officer accept a pre-award audit conducted by another federal agency, if such audit were conducted within the last year.

Prequalification Requirements

Section 2401 of the proposed Substitute would repeal Section 2383 of Title 10 of the United States Code. The Small Business Working Group commends the Committees for this action, as this provision could operate as an unfair prequalification requirement for the participation of small firms in the market for spare parts at the Department of Defense.

Contract Disputes Act Improvements

Section 2552 of the proposed Committee Substitute would make a number of amendments to the Contract Disputes Act of 1978 that would substantially improve its utility and fairness as a disputes resolution mechanism beneficial to small contractors. First, the provision would increase the current $10,000 threshold for the availability of small claims procedures to $50,000. Second, it would increase the Act's current $50,000 threshold for the availability of accelerated procedures before the Boards of Contract Appeals to $150,000. Third, it would increase the Act's current $50,000 threshold for certification of claims to $100,000. Fourth, it would establish a six-year period for the filing of claims unless there were an allegation of fraud on the part of the contractor. The Small Business Working Group commends the Committees for the adoption of these amendments, many of which were recommended in our testimony.

However, the Small Business Working Group is concerned that Section 2552(e) would reduce the current one-year period for filing appeals of adverse Board of Contract Appeals decisions to the courts to 90 days. Such a severe reduction could have a chilling effect on the contractor's right to appeal an adverse Board decision.

Alternative Disputes Resolution

Section 2553 of the proposed Committee Substitute would amend the Contract Disputes Act to extend for an additional four years the authority to use alternative disputes resolution techniques for the resolution of contract disputes. While the Small Business Working Group commends the Committees for extending the expiration date until October 1, 1999, we strongly urge the Committees to actually adopt statutory procedures to strongly encourage the procuring agencies to make use of ADR techniques. it is no secret that to date the procuring agencies have resisted ADR techniques and only affirmative steps will overcome this resistance.

Expedited Resolution of Contract Administration Matters

Section 2554 of the proposed Committee Substitute would require the issuance of FAR regulations that would contribute to more prompt resolution of contract administration matters. Under the provision, a contracting officer would be required to respond to the inquiries of a small business contractor within 30 days. If a contracting officer were unable to issue a response with regard to an inquiry made by a small business contractor within such 30-day period, the provision requires a response within such period that includes a date certain by which a response can be expected.

The small business community consistently has testified before various committees of the Congress that steps are needed to motivate contracting officers to promptly respond to inquiries which are essential to contract performance by small business contractors. All too frequently, small business government contractors are put behind schedule or in jeopardy of contract default due to a refusal of a contracting officer to make a timely response to a legitimate inquiry regarding contact specifications, terms or conditions. The Small Business Working Group commends the Committees for including Section 2554 as a substantial step in the right direction.

ACQUISITION MANAGEMENT (TITLE V)

Performance-Based Management Systems

Section 5001 and 5051 would require the establishment of performance-based contract management systems within the Department of Defense and the civilian agencies. Subsection (b) of each section would call for the identification of enhanced incentives for acquisition workforce personnel. The Small Business Working Group believes that any such system of contracting officer performance incentives should identify as an important factor the participation as contractors, subcontractor or suppliers of small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals or women.

Defense Acquisition Pilot Programs

Section 5003 of the proposed Committee Substitute relates to the designation of various DoD programs under the authority of the Defense Acquisition Pilot Program authorizing legislation. The provision would add a new Section 840 to the authorization legislation, Subtitle D of Title VIII of Public Law 103–160, the "National Defense Authorization Act for Fiscal Year 1994." Section 840(a) would designate as a DoD Pilot Program the acquisition activities of the Defense Logistics Agency's (DLA) Defense Personnel Supply Center (DPSC) for a broad array of medical, clothing and textile, and substance items. Given the dramatic adverse impacts on the small business and small disadvantaged business vendor community under DPSC's ongoing Prime Vendor Program for certain types of medical supplies

and equipment, the Small Business Working Group must express its strongest opposition to the inclusion of DPSC among the proposed DOD Pilot Programs.

Further, the Department of Defense is strongly advocating the expansion of the statutory waivers currently applicable to the DPSC Pilot Program to include the waiver of Section 15(a) and Section 8(d) of the Small Business Act. The recommended waiver of these statutory requirements makes clear DPSC's ultimate objective: the elimination of small business concerns as prime contractors or subcontractor within the broad range of items covered by this DOD Pilot Program. Such action would be in keeping with past adverse experience reported by many small business firms regarding other DLA centers.

STANDARDS OF CONDUCT (TITLE VI)

Public Comment Period on Proposed Procurement Regulations

Section 6054 of the proposed Committee Substitute would amend Section 22 of the OFPP Act to regularly accord at least 60 days for public comments on proposed regulations. Having adequate time to learn of, and comment on, proposed changes to procurement regulations has been a serious problem consistently identified by the small business community. The Small Business Working Group commends the Committees for this provision.

However, the Small Business Working Group recommends that Section 6054(2) be dropped as this amendment to Section 22 of the OFPP Act would create an immense loophole that could be used to negate the protections for public participation afforded by this entire existing provision of law.

EFFECTIVE DATES AND IMPLEMENTATION (TITLE IX)

Implementation Through the FAR

Section 9002 of the proposed Committee Substitute would specify a precise timetable for the issuance of proposed modifications to the FAR for the implementation of the "Federal Acquisition Streamlining Act of 1994." This timetable includes not less than 60 days for public comment on the proposed regulations. The Small Business Working Group would note that Section 6054(2), if improperly used, could negate the explicit protections of this section and Section 22 of the OFPP Act.

Review of Regulations by GAO

Section 9003 of the proposed Substitute would charge GAO with evaluating compliance by the Executive Branch with the requirements of Section 9002 relating to the issuance of implementing FAR coverage. The Small Business Working Group commends the Committees for including the Committees on Small Business of the Senate and House of Representatives as recipients of this GAO report. As noted in testimony before many committees of the Congress, the small business community has had a long standing concern, and a long standing history with "malicious implementation" of statutes by the regulation writers.

Enhanced Data Collection by the FPDS

Section 9004 of the proposed Committee Substitute calls for enhancements to the Federal Procurement Data System (FPDS) to capture additional data elements. The Small Business Working Group commends the Committees for the addition to this provision. Prior to enactment of the legislation, we plan to offer for the consideration of the Senate additional items of information to be collected.

Ms. MOSELEY-BRAUN addressed the Chair.

The PRESIDING OFFICER (Mr. WELLSTONE). The Senator from Illinois is recognized.

Ms. MOSELEY-BRAUN. Mr. President, I am a member of the Small Business Committee, which has a real interest in this bill, because of its impact on small and small, disadvantaged businesses. I rise today in support of this legislation, but also in the hope that it can be improved upon in conference.

Mr. President, S. 1587, the Federal Acquisition Streamlining Act of 1994, is a very important bill. It will have a powerful effect on small businesses and small, disadvantaged businesses. What I want to do is to be sure that the impact on small businesses and small, disadvantaged businesses will be a positive and not a negative one.

The Federal Acquisition Streamlining Act of 1994 modernizes and streamlines the existing Federal procurement process, making it easier to obtain commercial products rather than requiring the Government to unnecessarily design and build Government-unique products. Work on modernizing our procurement process has been in progress since the 102d Congress and S. 1578 is the culmination of this effort. I commend this administration and the National Performance Review team in their efforts to reinvent Government by cutting unnecessary time and paperwork from the procurement process. It will save the American taxpayers' money.

S. 1587 is a compilation of recommendations from the Section 800 Panel and the National Performance Review, along with input from other Members of Congress, Federal agencies, and advocacy groups representing a wide range of interests and concerns. This bill puts into law those recommendations in an effort to establish a new, more efficient system for American companies to do business with the Federal Government. Its intent is straightforward, to simplify and rationalize the way the Federal Government spends money on goods and services. It is the cornerstone of reinventing Government. While simple, this bill is also a part of a grand objective that requires completely changing the way that we do business.

I applaud those objectives, Mr. President, but I want to make sure that when we eliminate the laws that tie up the Federal Government's ability to get goods and services cheaply and quickly, we do not at the same time eliminate the laws that ensure that small businesses and small disadvantaged businesses have a real opportunity to supply those goods and services to the Federal Government on a level playing field.

As I have mentioned, many of the provisions in this bill come from recommendations made by the Section 800 Panel, the Acquisition Law Advisory Panel. This panel was established to review acquisition laws, with the goal of streamlining the Federal procurement process. Unfortunately, Mr. President, the small business community had minimal representation on this panel. As a result, many of the small business concerns were not a part of the panel's recommendations that are now a part of this bill.

I want the administration and businesses, big and small, to know that I support reforming our acquisition process, and I support this legislation. However, we need to be judicious in how that reform is done. And I would like, Mr. President, to quote the Small Business Administration's Chief Counsel for Advocacy's concerns regarding this bill:

> The zeal to reform must be tempered with adequate consideration for the concerns of the small business community. It took many years to instill sufficient checks and balances within the Federal procurement process to encourage competition and increase opportunities for small, minority, and women-owned firms. Some of these checks and balances are now seen as impediments to streamlining the procurement process. For reform to be meaningful and effective, it must be balanced equitably on all stakeholders.

I think it is important to stress that the role of the SBA Chief Counsel for Advocacy is to evaluate the impact of legislative proposals on small businesses specifically. The Chief Counsel for Advocacy does not represent the position of the administration, or even the SBA. The Chief Counsel for Advocacy represents the small business community and speaks for those interests, and that is why I quoted the statement from a letter that I would like to have submitted into the RECORD at the end of my comments, because it is so important to raise the issue and the concerns of the small business community as we pursue this grand design.

The Small Business Group Working on Procurement Reform, which represents a broad range of small business groups such as the Small Business Legislative Council, the Minority Business Enterprise Legal Defense and Education Fund, the National Association of Women Business Owners, the National Association of Minority Business Owners, the National Small Business United, and the National Federation of Independent Business does not endorse this bill in its current form. However, these small and small, disadvantaged business groups do recognize the need for reform in general and so have not actively opposed this legislation at this time.

Mr. President, I would like to submit the full text of the Chief Counsel for Advocacy's comments and those of the Small Business Working Group on Procurement Reform into the RECORD at the end of my statement.

Any effort to weaken the Small Business Act in regards to participation by

small and small, disadvantaged businesses would undo 20 years of legislation designed to open up the small business community's opportunity to do business with the Federal Government.

The laws that took 20 years to refine to help develop small and small, disadvantaged businesses need to be kept in place because of their importance in promoting small business and diversity in the Federal procurement process. There are 100 major corporations in the Federal procurement system that receive more than 60 percent of all Government contracts. Let me reiterate that, Mr. President: 100 major corporations receive more than 60 percent of all Government contracts. These prime contractors, because they are paid by the taxpayers, have an obligation, I believe, to diversify their pool of small Federal contractors to include small businesses and small, disadvantaged businesses. The large subcontractors of prime contractors should also equally share in the goal of using small and small, disadvantaged businesses.

Allowing regulatory waivers of the subcontracting requirements for contractors and subcontractors would defeat the intent of that 20 years of legislative effort. Reform, Mr. President, should not result in exclusion.

While the bill as amended places greater emphasis on the use of small and small, disadvantaged businesses by making their use a significant factor in the award of a Federal contract—and I want to applaud the sponsors for that initiative—the waiver provisions of this legislation may seriously undermine much of that objective.

I am also very concerned about the bill's broad definition of commercial items and commercial components and how this affects small businesses and small, disadvantaged businesses. This is a critical issue, and this very broad definition needs to be refined in order to protect the interests of small business persons.

Under current law, there are adequate provisions for contractors who offer truly commercial items. Current practice at GSA and other agencies allow for companywide certification of manufacturers who provide truly commercial products. Expanding this practice to all agencies for the procurement of commercial items is a good idea, it seems to me.

However, the definition of commercial items in the legislation currently is so broad that it applies to items that may or may not be sold commercially in the future. This broad definition could allow firms to use an offer of a product to sell to the general public as a means of avoiding the subcontracting requirements, and particularly subcontracting requirements that protect and promote and help small and small, disadvantaged businesses.

Based on the Vice President's assurance that these concerns will be addressed in conference, I believe it is appropriate to move forward with this bill. It is my understanding that the administration will work with the Senate and House conferees on these important matters. I am confident with the bipartisan leadership on this issue along with Senators BUMPERS, GLENN, and NUNN that they will work to resolve this issue in conference in the interests of the small business community.

With that, Mr. President, I have to tell you that in my conversations with the leadership there has been demonstrated a real sensitivity to the concerns of the small business community. So I really am optimistic that these issues can be resolved. However, I wanted to make the point now with regard to the legislation in its current form, because this is a matter that is entirely too grave and too important to let go without comment.

Mr. President, I want to thank former Congressman Parren J. Mitchell for his assistance throughout this process. The Minority Business Enterprise and Legal Defense Fund, chaired by former Congressman Mitchell, was an instrumental participant in the small business community's effort to make this a balanced bill that will open rather than foreclose opportunities for small and small, disadvantaged businesses to market their products and services to the Government and to major Government prime contractors and subcontractors.

Finally, I want to applaud the efforts of Vice President GORE and Senator GLENN and Senator NUNN and again the bipartisan leadership for taking us one important step closer to the goal of reinventing Government. I think the sensitivity that has been shown to small and small, disadvantaged business concerns has been impressive, and I am confident that we will address the concerns of the small business community in conference.

Again, Mr. President, I just wanted to rise to add my voice of support and congratulations for this initiative for the direction in which it is headed, but again in the process of reform I am hopeful that we will remember the interests and concerns of the small business community—a community that has struggled for so long to get into the Federal procurement process. I hope that our rush to reform will not close them out of procurement opportunities.

Mr. President, I ask unanimous consent to print in the RECORD the June 6 letter from the Small Business Working Group on Procurement Reform and the May 23 letter from the SBA Chief Counsel for Advocacy to the chairman of the Small Business Committee.

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

SMALL BUSINESS WORKING GROUP ON PROCUREMENT REFORM

JUNE 6, 1994.

Hon. DALE BUMPERS,
U.S. Senate,
Washington, DC.

DEAR SENATOR BUMPERS: The Small Business Working Group on Procurement Reform wants to take this opportunity to share with you our observations and positions concerning S. 1587, the "Federal Acquisition Streamlining Act of 1994." The Senate is scheduled to consider this bill at 3:30 p.m. on Tuesday, June 7.

Although S. 1587 as reported by the Committees on Governmental Affairs and Armed Services reflects recommendations made by the Working Group in testimony, and there are several additional important improvements in a proposed Managers' Amendment, it is our judgment that we should not endorse this legislation, given that a shift of but a few provisions would tilt it into the category of being a "net loss" for small business. Instead, we would seek to work cooperatively with those who have sought to accommodate small business concerns to fashion further improvements during consideration by the Senate and during the subsequent conference with the House of Representatives.

We do not withhold our endorsement lightly. Procurement streamlining is and has consistently been an objective of the small business community. As we have said previously, true procurement streamlining must simply not make it easier for the Government's buyers to go to work each day, but for private sector business concerns and, especially small business concerns, to be treated fairly in their efforts to sell to their Government. This remains our goal and S. 1587 has been modified to reflect a greater recognition of its legitimacy.

We ask you to give greater recognition to our objectives in procurement streamlining as the bill and proposed amendments are debated by the Senate. Our more specific comments on possible amendments to S. 1587 follow:

(1) Class Waiver of the Applicability of Certain Laws to Subcontractors. S. 1587, as reported, would authorize procurement bureaucrats to waive the application of laws with regard to subcontractors of prime contractors furnishing commercial products. The Small Business Working Group is opposed in principal to the concept of allowing unelected career officials to waive statutes enacted by Congress. If such waivers are truly necessary, Congress, not the bureaucracy, should specify the waivers.

One candidate for application of this waiver authority is of special interest to the Working Group—the requirement for certain subcontractors to have goals for the participation of small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals. As written, the bill prohibits the regulatory waiver of the subcontracting requirements of Section 8(d) of the Small Business Act. We urge you to support Senator Carol Moseley-Braun in her efforts to block any amendment that would change current practice regarding the use of small business concerns as subcontractors and suppliers.

(2) Market Acceptance Criteria. S. 1587 would permit procurement regulation writers to prescribe market acceptance criteria which an offeror would have to meet in order to sell commercial items to the Government. Such market acceptance criteria could be written to foreclose the participation of fully

commercial small firms with other than national markets. We do not believe that the proposed change contained in the Managers' Amendment precludes such an abuse. The Working Group believes the bill should prescribe standards for such market acceptance criteria that will not permit the elimination of a firm solely on the basis of its volume of sales. We urge you to support any floor amendment which would specify statutory standards and prohibit the use of volume of sales as a criteria. We also urge you to support any amendment that would make a determination that a small firm had failed to meet a market acceptance criteria a matter subject to review by the Small Business Administration under its Certificate of Competency Program.

(3) Response Times Left to Regulators. S. 1587 would leave to the regulation writers the establishment of the time made available for an offeror to submit a response to a solicitation for a commercial item, a small purchase under the new $100,000 Simplified Acquisition Threshold, or any solicitation made through electronic commerce. The Small Business Working Group is concerned that the regulation writers will allow such response times to be set on a contract-by-contract basis. We urge you to support any floor amendment which would either Congressionally-prescribe, or require that the Federal Acquisition Regulation prescribe, minimum response times.

(4) Simplified Acquisition Procedures and "Micro-Purchases." S. 1587 exempts purchase of $2500 or less from the so-called "Small Business Small Purchase Reserve." This purportedly was done to facilitate broader use of a government credit card to permit non-procurement personnel to make more purchases of commercial items from major retailers, most of which are not small businesses. However, as written, the provision exempts all purchases under $2500. The Small Business Working Group believes that two amendments are appropriate. First, there should be a linkage between the actual use of the government credit card as a precondition to the waiver of the Small Business Small Purchase Reserve. Second, even when the government credit card is used, Congress should require the Federal Acquisition Regulation to admonish government purchasers to try to make use of small businesses "to the maximum extent practicable." We urge you to support any floor amendment that would achieve these two goals.

(5) Procurement Protests: Limitations on Attorneys' Fees. The Small Business Working Group strongly opposes the provisions in S. 1587 which would limit the amounts to which a small business owner would be entitled to recoup for attorneys' fees and expert witness fees upon winning a successful bid protest. Under current law, which has worked since 1984, a successful protestant may be reimbursed for legal costs actually incurred, if the General Accounting Office or the General Services Board of Contract Appeals finds them to be reasonable. The provision would artificially limit the legal fees that could be recouped to the maximum hourly rate allowable under the Equal Access to Justice Act, $75.00 per hour, which has remained unchanged since 1980. Such a limitation would have a chilling effect on the bid protest protections afforded by the competition in Contracting Act of 1984, falling especially hard on small firms. We urge you to support an amendment to be offered by Senator Paul Wellstone that would either strike this unfair limitation completely or eliminate small firms from its chilling effects.

(6) Alternative Disputes Resolution. S. 1587 misses the opportunity to streamline the contracts disputes resolution process by eliminating the government's ability to avoid the use of alternative disputes resolution procedures when such procedures are appropriate. We urge you to support an amendment to be offered by Senator Paul Wellstone which would require that a small business concern be allowed access to ADR procedures unless the contracting officer could cite and justify one of the statutorily-specified circumstances under which current law deems ADR procedures to be inappropriate.

(7) Fast Pay for Small Purchases. S. 1587, as reported, contains a provision which assures that small firms will receive accelerated payment for performance of contracts awarded under the accelerated procedures to be used for contracts under the new $100,000 Simplified Acquisition Threshold. This provision merely makes mandatory an essentially identical fast pay provision for $25,000 small purchases which Congress adopted on a non-mandatory basis as part of the 1988 amendments to the Prompt Payment Act, but which was never fully implemented. It is the understanding of the Small Business Working Group that the Administrator for Procurement Policy is advocating the elimination or substantial weakening of this provision. We urge you to oppose any effort to do so.

(8) Measuring the Effects of the $100,000 threshold. S. 1587, as reported, also assures the Congress, as well as the small business community, will have concrete and comparable data to permit a valid assessment of the impact on small business concerns, including small business concerns owned and controlled by economically and socially disadvantaged individuals and women, of increasing the small purchase threshold from $25,000 to $100,000. It is the understanding of the Working Group that the Administrator for Federal Procurement Policy is seeking modifications to this provision that essentially will make it impossible to analyze the effect of this dramatic four-fold increase in the small purchase threshold. We urge you to oppose any such amendment.

Enclosed is a copy of our April 25, 1994 Commentary of the bill as it was considered by the Committees on Government Affairs and Armed Services. There were virtually no amendments made at the committee level. Also enclosed is a "Special Report" from The Honorable Jere W. Glover, the recently-confirmed Chief Counsel for Advocacy at the Small Business Administration, whose assessments in many ways mirror the concerns that have been consistently expressed by the Small Business Working Group.

We urge you to review and seriously consider the recommendations by our coalition of associations serving as advocates for small businesses, including those owned and controlled by socially and economically disadvantaged individuals or women.

Please help us to make acquisition streamlining a benefit, rather than a source of new burdens for them.

If you have any questions about this statement, please contact me at 703-684-3450.

Sincerely yours,

E. COLETTE NELSON,
Chair, Small Business Working Group on Procurement Reform.

SMALL BUSINESS WORKING GROUP ON PROCUREMENT REFORM

Small Business Legislative Council.
Minority Business Legal Defense and Education Fund.
Latin American Management Association.
National Center for American Indian Enterprise Development.
National Association of Minority Business.
National Association of Women Business Owners.
National Minority Supplier Development Council.
Women Construction Owners & Executives, Inc.
Independent Defense Contractors Association.
Independent Gear Manufacturers Association.
Interamerican Travel Agents Society.
National Small Business United.
National Federation of Independent Business.

SMALL BUSINESS ADMINISTRATION,
Washington, DC, May 23, 1994.

Hon. DALE BUMPERS,
Chairman, Committee on Small Business, U.S. Senate, Russell Senate Office Building, Washington, DC.

Subject: Report on Procurement Reform.

DEAR MR. CHAIRMAN: This is a report outlining the views of the Office of Advocacy on procurement reform.[1] It is prepared under the authority of 15 USC §634(f) and is intended to echo the concerns of the small business community. The Small Business Legislative Council, the National Small Business United, and the National Association for the Self-Employed agree with the opinions expressed herein.

Currently, Congress has before it a number of reform measures, including S. 1587, H.R. 2238, H.R. 3586, H.R. 4263 and H.R. 4328. Small firms are the engine supporting economic growth as well as the driving force behind job creation and innovation in America. Congressional due diligence in considering these proposals must therefore acknowledge and support the needs of the small business community.

The Office of Advocacy strongly endorses acquisition reform. Few would disagree that our procurement system is too complex, absurdly slow and frequently ineffective. However, the zeal to reform must be tempered with adequate consideration for the concerns of the small business community. It took many years to instill sufficient checks and balances within the federal procurement process to encourage competition and increase opportunities for small, minority and women-owned firms. Some of these checks and balances are now seen as impediments to streamlining the procurement process.

It is important to note that many of the proposed legislative changes come from recommendations made by the Acquisition Law Advisory Panel (Section 800 panel). This panel was established by the 1991 National Defense Authorization Act (Public Law 101-510, Section 800) to review acquisition laws, with a goal of streamlining the Department of Defense acquisition process. Unfortunately, the small business community had minimal representation and input to the panel.

For reform to be meaningful and effective, it must be balanced equitably on all stakeholders. It would be a costly injustice, as well as an exercise in regression, if the small business community were to be sacrificed at the expense of less competition, higher government costs and fewer procurement opportunities for small firms.

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[1] The views expressed in this document are solely those of the Chief Counsel for Advocacy and may not necessarily reflect the views of the U.S. Small Business Administration or the Administration.

We ask that you consider the following concerns in deliberations.

SIMPLIFIED ACQUISITION THRESHOLD

A critical component of the reform legislation focuses on increasing the small purchase threshold from $25,000 to $100,000. We support increasing the threshold if, and only if, specific measures are implemented to protect the small business community and enhance its ability to participate in federal procurement opportunities. These measures include:

Linking any increase in the small purchase threshold with a concurrent obligation to implement a coordinated government-wide electronic equivalent of the *Commerce Business Daily*.

While increasing the threshold will simplify the procurement process, it will hurt small firms if acquisition opportunities are not adequately publicized. If the threshold is increased without directly linking it to the implementation of an electronic commerce system, competition most likely would be minimized and many small firms would be precluded from participating in procurement opportunities. Reduced competition would increase the government's procurement costs.

We support the implementation of the federal acquisition computer network (FACNET) or similar government-wide electronic commerce system.

Maintaining the small business small purchase reserve for purchases of less than $2,500.

Awards to small businesses, especially emerging firms, will be reduced if purchases of less than $2,500 are not reserved. We agree that very small purchases should be easy to make and require minimal paperwork. Small firms can accommodate this need for greater simplicity.

For many small firms, very small purchases are the bread and butter of their operations. These same firms are often not able to compete for large federal acquisitions.

Requiring detailed reporting under the Federal Procurement Data System for any purchase of $10,000 or more.

This requirement is necessary to measure and evaluate the results of increasing the threshold.

Requiring the implementation of fast pay procedures in contracts awarded to small firms under the small purchase threshold.

The Prompt Payment Act Amendments of 1988 give executive agencies authority to implement fast pay procedures for contracts under the small purchase threshold. However, implementing regulations have basically neutered this provision, allowing agencies to avoid compliance.

Fast pay provisions in contracts below the threshold would require small firms to be paid by agencies within 15 days from the receipt of an invoice and require the availability of payment through electonic transfer upon contractor performance. Fast pay procedures, enacted in the Amendments of 1988, should be mandated.

Linking the threshold for small claims procedures to the simplified acquisition threshold.

This would raise the current small claims threshold from $10,000 to $100,000, allowing access to simplified and more efficient claims procedures.

Amending the Davis-Bacon Act, the Services Contract Act and the Miller Act.

The Davis-Bacon Act requires contractors for federal and public works projects to pay workers the local prevailing wage rate, usually union wages. The act was intended to prevent construction companies offering substandard wages from underbidding local companies. The threshold for coverage under the act was set at $2,000 in 1931 and remains the same today.

The Service Contract Act of 1965 has purposes for service contracts similar to those of the Davis-Bacon Act for construction. It applies to contracts in excess of $2,500. It requires contractors to pay the minimum prevailing wage and specified fringe benefits.

The Miller Act requires that for any federal construction contract worth $25,000 or more, the contractor must be bonded.

We urge that the threshold for these laws be increased to $100,000 or the established level for Simplified Acquisition Threshold. Further, we urge that the Federal Acquisition Regulations be modified, with respect to the Miller Act, to provide alternative payment protections for small business subcontractors and suppliers.

COMMERCIAL ITEMS

We support efforts to make a easier for firms to sell, and the government to buy, commercial products for government use. Reliance on commercial items is one of the identified purposes of the Competition in Contracting Act of 1984. We support a clear preference for the use of commercial items and performance specifications. However, aspects of the proposed legislation could be very damaging to small firms.

Broad Definitions for Commercial Items

Proposed definitions for commercial items are excessively broad. Not only do they include items that have been sold commercially, but they also include those which might (or might not) be sold commercially in the future. We are concerned that a firm could use its purported offer of a product to the general public, whether or not there is a commercial market, as a means of avoiding various statutory requirements. Further, some proposals would modify the definition of commercial items to include all forms of commercial services.

If the definition of commercial items were made excessively broad and specific statutory requirements eliminated as proposed, procurement opportunities for small firms would be significantly reduced.

Preserve Subcontracting Plans for Subcontractors

Proposed legislation would free subcontractors supplying commercial items or commercial components for government-designed products from any requirement to utilize small or small disadvantaged concerns as "second-tier" subcontractors and suppliers. We strongly oppose any effort to eliminate subcontracting plan requirements. Such changes in the law would have a significantly adverse effect on the ability of small firms to participate in contract opportunities.

The current law requiring the flow-down of subcontracts to small firms has helped many small, minority and women-owned businesses.

We endorse recommendations of the small business community to make small business and small disadvantaged business participation at the subcontract level a criterion for the award of prime contracts.

Market Acceptance

It is proposed that new procedures for the acquisition of commercial items be developed. We support the development of procedures that provide consistent, government-wide implementation, as opposed to allowing individual agencies to establish their own definition for market acceptance.

Further, implementing regulations that will ultimately define "market acceptance criteria" must be sensitive to the needs and especially the limitations of the small business community. We are concerned that such criteria could be used to set standards beyond the reach of many small firms. For instance, if market acceptance criteria were used as a test for "responsiveness," some firms would be eliminated from competing, before having any recourse to SBA's Certificate of Competency (CoC) program.

The CoC program is a very successful government initiative that has helped many small firms. It would be counter productive to allow the development of procedures that could cancel the intended purpose of the CoC program.

PILOT PROGRAMS

We acknowledge the need for and the advantages of testing and implementing alternative procurement methods. However, we oppose efforts that would grant sweeping authority to specific federal agencies and eliminate long-standing statutory protections for small businesses.

Test Authority

It has been proposed that the Administrator for the Office of Federal Procurement policy (OFPP), in considering procurement pilot programs, be given authority to waive not only regulations, but also laws, by simply giving notice to the Congress. Waivers of statutes should not be so lightly undertaken, and we oppose such blanket authority granted to the Administrator of the OFPP.

If statutory waivers are deemed necessary to conduct a pilot program, specific Congressional approval should be obtained and OFPP should be required to obtain the concurrence of the agency or agencies responsible for the statutes to be waived or suspended.

Defense Acquisition Pilot Program

Proposals would give the Secretary of Defense authority to waive or limit the applicability of specific statutory requirements in implementing the Defense Acquisition Pilot Program. The proposed waivers include eliminating small business set-asides, the small business small purchase reserve, and small and small disadvantaged business subcontracting plans. We oppose these proposals.

The small business programs cited have been established as an integral part of the protections for small businesses. These programs assure those new to the federal procurement environment that opportunities will be made available to them. The gradual elimination of these protections not only removes specific opportunities from the table, but also sends a message that efficiency of administration and convenience of established relationships are more important than helping small firms to grow and participate in the federal procurement process.

EXTENSION OF THE DOD MINORITY ENTERPRISE DEVELOPMENT PROGRAM

Proposals would extend to civilian agencies the minority enterprise development program currently authorized for DoD under 10 U.S.C. 2323 (formerly Section 1207 of Public Law 97-661, the National Defense Authorization Act for 1987). We recommend that the SBA play an integral role in the development and oversight of an extended Minority Enterprise Development Program.

CONTRACT GOALS

We support increasing the government-wide goal for participation by small business concerns for 20 percent to 25 percent of the total value of all prime contract awards for

each fiscal year. Further, we support establishing a goal for the participation of women-owned businesses at 5 percent of the aggregate value of all prime contracts.

BEST-VALUE CONTRACTING

Best-value practices are intended to help government agencies receive the best overall value in contracts it awards. Under such practices, contracts are awarded by considering a combination of price and technical factors, with technical factors taking precedence. The concept removes the super- preference for low-bid proposals and puts best-value negotiated solicitations on equal footing with sealed bid solicitations.

We support the intended purpose of best-value practices, but are concerned with the level of subjectivity such practices provide to contract officers in weighing individual evaluation factors. We recommend that any effort to broadly incorporate the use of best value practices include specific provisions that would clarify evaluation factors, specify weighing procedures and minimize subjectivity.

TRUTH IN NEGOTIATIONS ACT

The Truth in Negotiations Act (TINA) requires contractors to submit cost or pricing data before the award of a contract or a contract modification that is expected to exceed $500,000. Similar requirements are imposed on subcontractors, who must submit such data to the prime contractor. Current law stipulates that the $500,000 threshold be reduced back to the 1984 level of $100,000 after December 31, 1995. We support proposals to keep the TINA threshold at $500,000.

PAST PERFORMANCE PRACTICES

Proposals would alter regulations that require federal agencies to consider a contractor's past performance in awarding future contracts. We are concerned that such practices could impede the ability of small firms, especially minority and women-owned businesses, to obtain federal contracts. This is because most small firms have limited experience in the government market place.

We recommend that any provisions to consider past performance in the evaluation process include specific measures to consider both commercial and federal past performance; include recognition of a firm's compliance with its subcontracting obligations under Section 8(d) of the Small Business Act and clearly acknowledge that a company would not be penalized if no information regarding past experience was available.

TECHNICAL DATA RIGHTS

In addition to pending procurement reform legislation, Congress is considering recommendations prepared by the DoD/Industry Technical Data Advisory Committee (Section 807 committee).

The 807 committee is charged with preparing recommendations that will lead to the development of technical data regulations that are equitable to all federal contract participants in the creation and use of technical data. This is a powerful issue, charged with controversy and fueled by different agendas. Although the committee sought consensus among divergent groups, its recommendations appear to side with the interest of predominantly large firms.

A key recommendation made by the committee is that data rights be determined based upon whether development is charged to DoD as a direct or indirect charge, rather than whether it is paid for by the DoD. In the interests of small business, greater competition and reduced government costs, we urge that all data paid for by the taxpayer be available for competitive purposes, irrespective of whether it is charged to the government as a direct or indirect cost. Further, we urge that careful consideration, as well as a comprehensive analysis of the projected impact on small manufacturers, be undertaken before technical data regulations are changed.

Procurement reform is desperately needed and should be vigorously pursued. We strongly endorse efforts to simplify and streamline the procurement process. However, reform must be equitable and not carried on the back of the small business community.

The Office of Advocacy shares the commitment of the Congress to make meaningful reform a reality and stands ready to work with it in that endeavor.

Sincerely,

JERE W. GLOVER,
Chief Counsel,
Office of Advocacy.

Ms. MOSELEY-BRAUN. I thank you very much, and I yield the floor.

The PRESIDING OFFICER. The Senator from New Mexico is recognized.

Mr. BINGAMAN. Mr. President, first, I ask unanimous consent that Michael Hammon, a legislative fellow serving in my office, be granted floor privileges during the consideration of this bill.

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

Mr. BINGAMAN. Mr. President, this day has been a long time coming. The bill before us today, the Federal Acquisition Streamlining Act of 1994, is the product of long hours of hard work on the part of Government and industry. As I said at the time of our markup in the Armed Services Committee, this bill is not the cure-all to all the problems besetting the Federal acquisition system. But it is the most comprehensive approach to streamlining Federal acquisition in almost a generation. It provides an essential foundation on which further regulatory reform can proceed in the executive branch, for the majority of the impediments in the acquisition system arise from the encyclopedic regulations implementing statues.

Mr. President, in this bill we strip away statutory impediments—or at least many of the statutory impediments—to efficient acquisition which cost Government and business precious dollars. It has been said by me and by others that today in the present system we are spending millions to save thousands. This bill tries to correct that problem. This bill tries to improve the ability of small business to compete, and foster the establishment of an electronic notification system to let everyone know what the Government wants to buy.

This effort has evolved over 8 years and several forums, starting with the Packard Commission of 1986. Over those years a bipartisan consensus developed that the acquisition system was broken, in large part as the result of statutes and regulations, perhaps each well intended taken separately, but which together resulted in an unworkable and expensive system that drove many commercially oriented firms from wanting to do business with the Government. Those 8 years also saw a sharp drop in Government purchases from the economy, as defense budgets declined, and a growing need for the Department of Defense and the civilian agencies to make the best possible use of their limited resources by buying commercial products wherever possible. The acquisition system was clearly impeding such commercial-Government integration, or commercial-military integration as Secretary Perry calls it in the defense sphere.

Unfortunately, it proved very difficult for the acquisition system itself to generate the sort of detailed roadmap both the executive branch and the Congress needed to streamline the acquisition system. Under Secretary for Acquisition Bob Costello during the Reagan administration and the late Don Atwood, Deputy Secretary during the Bush administration, did pursue reforms. But ultimately, they were not on the scale required.

So in 1990, the Armed Services and Governmental Affairs Committees tried a new approach, which I had suggested based on my experience with the very constructive role the American Bar Association had played in developing a uniform procurement code at the State level. We inserted language in section 800 of the fiscal year 1991 National Defense Authorization Act directing DOD to establish a joint Government industry panel to carry out a detailed examination of the entire procurement code statute by statute, with an eye toward streamlining it significantly, and to make their recommendations in December 1992 to whomever had just been elected President as a detailed prescription for reform.

To their great credit under the leadership of Rear Adm. Bill Vincent, the Section 800 Panel carried out their charter admirably, and after over 15 months made their recommendations on time to the incoming Clinton administration. The panel took the broadest possible perspective of the reform task. Their report laid out a plan for reform of the DOD acquisition system. As has been noted, they reviewed over 600 laws and recommended repeal or substantial revision of nearly 300. It was a remarkable effort with implications for Governmentwide reform.

The panel's report and its recommendations formed a starting point both for the Congress and for the President to consider and ultimately laid the foundation for this bill. Last year, the staffs of the Armed Services, Government Affairs, and Small Business Committees carried out a detailed review of the entire report and added to it several proposals made earlier by members, particularly Senators GLENN, LEVIN, COHEN, and ROTH. When the administration completed the National

Performance Review last September, we also incorporated several ideas which had come up in that process. The product of that effort was the bill introduced last fall.

Mr. President, since introducing the bill, the committees have had the benefit of testimony from leaders in the DOD, OFPP, GSA, the IG community, and, most importantly, representatives from industry associations, dual-use contractors, small business, and professional organizations. Prior to our markup of the bill last month, I also sought suggestions for improvement from a wide range of people who will put this bill into practice and who will to do business using the new streamlined practices. Their suggestions made an important contribution to the process. In my State of New Mexico I would like to recognize the efforts of National Contract Management Association members in Las Cruces, Santa Fe, and Albuquerque, Mr. Ted Asbury and Mr. Jim Gibbs of the Associated General Contractors in Albuquerque were particularly helpful in discussions here and in the State.

I recommend Senators GLENN and ROTH for their leadership on the Governmental Affairs Committee and Senators NUNN and THURMOND for their leadership on the Armed Services Committee, all of which was vital and instrumental in getting to where we are now. Also, Senators BUMPERS and PRESSLER and their staff on the Small Business Committee were essential to the success of this process. Lastly, the Clinton administration has been very cooperative in suggesting areas for improvement. The whole effort would have stopped may times, if it hadn't been for the dedicated and professional, bipartisan effort of many members and staff who believed that this was a unique opportunity to substantially reform a broken procurement system.

Mr. President, let me just allude to the staff people on the three committees who did the most work on this. On the Armed Services Committee, it was Andy Effron and Jon Etherton; from Governmental Affairs, Tom Sisti, John Brosnan, Peter Levine, Mark Forman, and Paul Brubaker; from the Small Business Committee, it was Bill Montalto; in my own office, it was Ed McGaffigan, John Gerhart, and Mike Hammon.

The concept for all to remember in this bill "streamlining." This bill strips away statutory impediments, which have made the Government procurement system impossible to administer, inefficient and wasteful of tax dollars, and a system whose complexity, intrusiveness, and paperwork deter large and small businesses who want to contract with the Government. We change and improve that system for all participants.

Mr. President, I want to describe some of the major reforms in this bill. First and most important, it encourages the purchase of more commercial goods and services. Too often, we have developed new, sometimes very risky items that were over specified or gold plated, simply because the system directed the use of layers of Government specifications and boilerplate. No one was incentivized to ask at the outset of the process whether such specifications were needed, if they added value to the item, or if a commercial product or nondevelopmental item would do the job adequately.

This bill changes that process by directing the contracting agency to look at commercial or nondevelopmental products first. An important benefit of using commercial and off-the-shelf items is to eliminate duplication, save money, and speed up the acquisition process. When that happens, we also are able to take better advantage of emerging technology, which is generally today driven by the enormously larger commercial marketplace, not by Government.

As an example, right now it takes years to buy desktop computers. As we all know, things change pretty rapidly in the computer field, and by the time the contract is awarded and the computers arrive, they are often obsolete. The same principle applies to large procurements, too. Some major development programs are taking up to 10 years, while the commercial sector develops the same or similar items in a fraction of that. In the time it has taken the Air Force to buy the C–17, Boeing has designed, tested, and produced the 747–400, 757, and 767. And they recently rolled out the new 777. Current procedures don't serve the taxpayer well and must be streamlined. This bill authorized the Defense Department to test six pilot programs to see if similar streamlining can reap dividends on those major acquisitions, as well.

You've heard, Mr. President, about the provisions for buying fewer overspecified Government unique items, especially when commercial products versions would do the job cheaper and faster. What I want to talk about now is the how this bill reduces the intrusion Government has made into the workplace.

For commercial products, we no longer require the contractor to submit volumes of cost and pricing data to prove the Government is getting a fair price or to set up Government-unique cost accounting systems. Time and again, we have been told that such practices have no counterpart in the business world and are the biggest burden we put on companies doing business with the Government. With the emphasis on using more commercial practices, the contracting officer will use the same market information a commercial firm would. He or she can verify the fairness of the price by doing market research using catalogs, prices negotiated in previous competitions, or prices set by law. To determine if it is a commercial item, this bill defines very general criteria about products that are customarily available in the commercial marketplace or could readily be modified for Government use, without changing its inherent commercial nature. Finally, we encourage use of commercial products by relieving both commercial and noncommercial contractors of many regulatory requirements when they are producing commercial products for the Government.

Another major streamlining vehicle in this bill is the simplified acquisition threshold. Current law has shown that simple procedures can save time and money for purchases under the "small purchase threshold" of $25,000. This bill expands application of streamlined procedures, which will be developed by the administration, to a new simplified acquisition threshold of $100,000, as recommended by both the Vice President's National Performance Review and the Section 800 Panel.

Though such procurements comprise only 16 percent of all funds expended, they constitute 96 percent of all contracts. You can see, Mr. President, that if we can streamline those procurements, reform will happen on a broad scale. Purchases below that $100,000 simplified acquisition threshold will be exempt from the paperwork and certifications for numerous acts such as the contingent fees certification, identification of suppliers and sources, and many others difficult to certify and requiring the contractor to submit huge amounts of paperwork and comply with procedures that have no commercial counterpart.

This bill sets a course toward eliminating a myriad of procedures and rules that are costly, burdensome, and wasteful for Government and business alike. In fact, these wasteful procedures are costing the taxpayers more money. Too often we are spending millions of dollars in paperwork and time of Federal employees to "save" thousands on a contract. Repeatedly, we have heard testimony that such procedures drive the cost of goods and services up as much as 30 percent over the same or similar items in the commercial marketplace. In a time of defense drawdown and declining budgets, we simply cannot tolerate that kind of waste, if we ever could. We must assure our constituents that every tax dollar buys as much as possible and we spend only what is necessary to do the job.

We don't recommend that the Government's interests go unprotected, however. For the first time, the agency must consider contractor past performance in the source selection. The agency may ask the offeror to submit information on past contracting actions at the Federal, State, local, and commercial levels. With reports on hand, the

Government will be able to choose, not just the best proposal, but the contractor with the best performance record, as well.

Innovative acquisition management provisions recommended by Senator ROTH are incorporated. They reward acquisition personnel based upon performance. They will be measured against cost, schedule, and how well the item performs. The bill sets a goal of 90 percent of all programs to meet those goals, in accordance with the recommendations of the National Performance Review. Further, the public's interest will be addressed when the Comptroller General reports on the progress the executive branch makes in implementing these procedures 1 year after the regulations go into practice. If there are areas to be tightened up or new problems to address, we will do it. This is a sweeping step we're taking in this bill, but it's the first, not the last step on the journey.

Finally, Mr. President, we broaden small business' access to the Federal acquisition system. Small business is the engine of the economy and the sector that provides the greatest opportunity for job creation. We have traditionally reserved a large segment of contracts for small business, and this bill continues that process. All procurements below the $100,000 simplified acquisition threshold are reserved for small business. Recall, that was 96 percent of all contracts the Government makes. Further, we speed up the notification process when the Government wants to buy from small business, and we bring the notification process into the electronic age.

A system of electronic commerce will be established by the Office of Federal Procurement Policy. That will be an electronic bulletin board that any businessman with a computer and modem can get procurement information from instantaneously. That will do away with the current system of physically going to the contracting office to read procurement notices on the bulletin board. It will be particularly helpful in rural States like New Mexico where we have many qualified small businesses, but not conveniently located near the Government agency doing the procurement. This bill also speeds up the protest system to provide for quick notification and resolution to business in the event of a dispute. And finally, and perhaps most importantly, the bill speeds the payment process on Federal contracts, a significant contribution from our colleagues on the Small Business Committee.

Mr. President, we all have heard loud and clear from our constituents that they don't think the Government works any more. Polls indicate that this concern is higher than ever; nearly 70 percent don't trust Government to do the right thing. We in Congress are held to a particularly high standard, as the people's representatives. This bill sends a clear signal that we have gotten the message and are making the drastic changes the people want. We must seize this opportunity to reform the broken Federal acquisition system and make Government more efficient, more responsive, and more businesslike.

PRIVILEGE OF THE FLOOR—S. 1587

Mr. GLENN. Mr. President, I ask unanimous consent that Marie Muller, who is a fellow working with Senator WELLSTONE's office, be granted the privilege of the floor during the consideration of S. 1587.

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

Mr. GLENN. Mr. President, I think just the very number and varied committee assignments of the people who have spoken on the floor today in their opening statements indicate how this bill falls across a number of jurisdictions and why it has been a major effort to get this all worked out. It has been a major effort and we are very proud of this. I hope we can get this legislation through without having it bogged down with too many amendments. I hope we keep amendments off of it unless we have the type that can be approved.

But I also want to give credit to some other people: Roger Johnson over at the General Services Administration has indicated support for this piece of legislation; Steve Kelman of the Office of Federal Procurement Policy has worked on this a great deal and we had many meetings back and forth with him; Colleen Preston over at DOD, Deputy Under Secretary for Acquisition Reform, has worked with us on this also, and has been in many meetings on this subject.

I think Colleen Preston, and the fact there is a Deputy Under Secretary for Acquisition Reform, indicates the new seriousness with which DOD is approaching acquisition reform. Secretary Perry and Deputy Secretary Deutch both indicated full support, as I indicated, in a letter, a little while ago. They also, in private conversations, have indicated there is nothing they place much higher priority on over at DOD than getting this kind of acquisition reform legislation through, as I said before, as a very major, big, first step, a starting point toward moving toward better efficiency, not only in DOD but across the length and breadth of Government.

Mr. ROTH. Will the Senator yield for a short comment?

Mr. GLENN. Surely.

Mr. ROTH. I would like to add to the list of people who have contributed so much to this effort Paul Lieberman, who is a member of the General Accounting Office, who has been on loan to my office. He has not only devoted long hours, but his expertise has been a significant factor.

Mr. GLENN. I am glad Senator ROTH brings that up. And also the Congressional Budget Office has worked on this with us, too. There are many estimates back and forth. CBO, GAO, all the acronyms, the alphabet soup of letters we have involved in Government, all were involved with us.

AMENDMENT NO. 1748

(Purpose: To make various amendments of a technical nature)

Mr. GLENN. Mr. President, I send to the desk a technical amendment cleared on both sides containing various technical corrections to S. 1587. We had different versions of the bill originally, and we need this legislation to correct it. It does not make substantive policy changes in the legislation. I ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Ohio [Mr. GLENN] proposes an amendment numbered 1748.

Mr. GLENN. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

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

The amendment is as follows:

On page 24, line 10, strike out "that incorporates" and all that follows through "incorporated in" on line 12, and insert in lieu thereof "for a commercial item other than a commercial component, the make and model of the item being provided in accordance with".

On page 25, strike out lines 20 and 21, and insert in lieu thereof the following:

"(ii) the same information that would have been provided to the original offerors.

On page 28, between lines 22 and 23, insert the following:

"(c) SOLICITATION TO STATE NUMBER OF OFFERORS TO BE SELECTED FOR PHASE TWO REQUESTS FOR COMPETITIVE PROPOSALS.—A solicitation issued pursuant to subsection (b)(1) shall state the maximum number of offerors that are to be selected to submit competitive proposals pursuant to subsection (b)(3).

On page 28, line 23, strike out "(c)" and insert in lieu thereof "(d)".

On page 29, line 3, insert end quotation marks and a period at the end.

On page 29, strike out lines 4 through 15.

On page 50, line 21, strike out "that incorporates" and all that follows through "incorporated in" on line 23, and insert in lieu thereof "for a commercial item other than a commercial component, the make and model of the item being provided in accordance with".

On page 52, strike out lines 6 and 7, and insert in lieu thereof the following:

"(B) the same information that would have been provided to the original offerors.

On page 55, between lines 11 and 12, insert the following:

"(c) SOLICITATION TO STATE NUMBER OF OFFERORS TO BE SELECTED FOR PHASE TWO REQUESTS FOR COMPETITIVE PROPOSALS.—A solicitation issued pursuant to subsection (b)(1) shall state the maximum number of offerors that are to be selected to submit competitive proposals pursuant to subsection (b)(3).

On page 55, line 12, strike out "(c)" and insert in lieu thereof "(d)".

On page 55, line 17, insert end quotation marks and a period at the end.

On page 55, strike out line 18 and all that follows through page 56, line 2.

On page 58, line 12, strike out "severable contract" and all that follows through "services" on line 13, and insert in lieu thereof "contract for procurement of severable services".

On page 58, strike out line 17 and all that follows through page 59, line 2, and insert in lieu thereof the following:

"(b) OBLIGATION OF FUNDS.—Funds made available for a fiscal year may be obligated for the total amount of a contract entered into under the authority of subsection (a).".

On page 63, strike out lines 11 through 14, and insert in lieu thereof the following:

"(C) policies for ensuring that—

"(i) offerors are afforded an opportunity to submit relevant information on past contract performance, including performance under contracts entered into by the executive agency concerned, contracts entered into by other departments and agencies of the Federal Government, contracts entered into by agencies of State and local governments, and contracts entered into by commercial customers; and

"(ii) such information submitted by offerors is considered.

On page 63, on line 16, strike out "the policy" and insert in lieu thereof "guidance".

On page 63, on line 17, strike out "may" and insert in lieu thereof "should".

On page 68, line 9, strike out "contracting officer" and all that follows through line 17, and insert in lieu thereof "contracting officer obtains, in accordance with standards and procedures set forth in the Federal Acquisition Regulation, information on prices at which the same or similar items have been sold in the commercial market that is adequate for evaluating the reasonableness of the price of the contract or subcontract for a commercial item, or the contract or subcontract modification, as the case may be. The contracting officer may obtain such information from the offeror or contractor or, when such information is not available from that source, from another source or sources.".

On page 70, strike out lines 7 and 8, and insert in lieu thereof the following:

prices at which the same or similar items have previously been sold that is adequate for evaluating the reasonableness of the price of the proposed contract or subcontract for the procurement.

On page 78, line 25, strike out "contracting officer" and all that follows through page 79, line 8, and insert in lieu thereof "contracting officer obtains, in accordance with standards and procedures set forth in the Federal Acquisition Regulation, information on prices at which the same or similar items have been sold in the commercial market that is adequate for evaluating the reasonableness of the price of the contract or subcontract for a commercial item, or the contract or subcontract modification, as the case may be. The contracting officer may obtain such information from the offeror or contractor or, when such information is not available from that source, from another source or sources.".

On page 84, line 22, strike out "such offeror" and all that follows through line 23, and insert in lieu thereof "the same or similar items have previously been sold that is adequate for evaluating the reasonableness of the price of a proposed contract or subcontract for the procurement.".

On page 110, line 20, insert "'commercial component'," after "'commercial item',".

On page 116, line 15, insert "'commercial component'," after "'commercial item',".

On page 125, between lines 18 and 19, insert the following:

(h) RELATIONSHIP TO PROMPT PAYMENT REQUIREMENTS.—Section 2307(f) of title 10, United States Code, as amended by subsection (f), is not intended to impair or modify procedures required by the provisions of chapter 39 of title 31, United States Code, and the regulations issued pursuant to such provisions of law, that relate to progress payment requests, as such procedures are in effect on the date of the enactment of this Act.

On page 125, line 19, strike out "(h)" and insert in lieu thereof "(i)".

On page 126, line 4, strike out "(i)" and insert in lieu thereof "(j)".

On page 133, line 2, strike out "amendments" and insert in lieu thereof "amendment".

On page 133, line 3, strike out "are" and insert in lieu thereof "is".

On page 159, strike out lines 6 through 20 and insert in lieu thereof the following:

not required—

"(A) where the contractor or subcontractor is a foreign government or agency thereof or is precluded by the laws of the country involved from making its records available for examination; and

"(B) where the agency head determines, after taking into account the price and availability of the property and services from United States sources, that the public interest would be best served by not applying paragraph (1).

"(3) Paragraph (1) may not be construed to require a contractor or subcontractor to create or maintain any record that the contractor or subcontractor does not maintain in the ordinary course of business or pursuant to another provision of law.

On page 175, line 12, strike out "for a" and all that follows through "officer's decision" on line 13, and insert in lieu thereof "made to a contracting officer".

On page 175, line 17, strike out "render a decision" and insert in lieu thereof "reply".

On page 175, line 20, strike out "reach a decision" and insert in lieu thereof "respond".

On page 175, between lines 20 and 21, insert the following:

The provisions shall not apply to a request for a contracting officer's decision under the Contract Disputes Act of 1978 (41 U.S.C. 601 et seq.).

On page 196, line 12, strike out "(as defined" and all that follows through "Administrator of General Services)" on line 14.

On page 203, between lines 3 and 4, insert the following:

"(5) A requirement that a contracting officer consider each responsive offer timely received from an eligible offeror.

On page 204, line 7, strike out "section 8(a)" and insert in lieu thereof "subsection (a) or (c) of section 8".

On page 205, line 2, strike out "will vest" and insert in lieu thereof "vests".

On page 205, line 4, strike out "and".

On page 205, line 10, strike out the period at the end and insert in lieu thereof "; and".

On page 205, between lines 10 and 11, insert the following:

(3) funds are available for making the payment.

On page 206, between lines 13 and 14, insert the following:

(c) NOTICE NOT REQUIRED IN ELECTRONIC COMMERCE.—Subsection (c)(1) of such section, as amended by section 1055(b), is further amended—

(1) by redesignating subparagraphs (A), (B), (C), (D), (E) and (F) as subparagraphs (B), (C), (D), (E), (F), and (G), respectively; and

(2) by inserting above subparagraph (B), as so redesignated, the following new subparagraph (A):

"(A) the proposed procurement is conducted by means of electronic commerce pursuant to a system that, as determined by the Administrator for Federal Procurement Policy, has the capabilities described in subsections (a) and (b) of section 4015 of the Federal Acquisition Streamlining Act of 1994;".

On page 206, line 14, strike out "(c)" and insert in lieu thereof "(d)".

On page 209, beginning on line 7, strike out "and solicitations." and all that follows through line 11, and insert in lieu thereof "of solicitations and for deadlines for the submission of offers under solicitations. Each minimum period specified for a notification of solicitation and each deadline for the submission of offers under a solicitation shall afford potential offerors a reasonable opportunity to respond.".

On page 209, line 20, insert "the Federal Acquisition Regulation contains the provisions specifically required by subsection (c) and" after "if"

On page 213, line 8, strike out "(B)" and insert in lieu thereof "(C)".

On page 220, strike out line 11 and all that follows through page 221, line 15, and insert in lieu thereof the following:

(C) in paragraph (3)—

(i) by striking out "small purchase threshold" and inserting in lieu thereof "simplified acquisition threshold"; and

(ii) by striking out "small purchase procedures" and inserting in lieu thereof "simplified procedures";

(E) in paragraph (4), by striking out "small purchase procedures" and inserting in lieu thereof "the simplified procedures"; and

(F) by inserting after paragraph (1) the following new paragraph (2):

"(2)(A) The Administrator of General Services shall prescribe regulations that provide special simplified procedures for acquisitions of leasehold interests in real property at rental rates that do not exceed the simplified acquisition threshold.

"(B) For purposes of subparagraph (A), the rental rate or rates under a multiyear lease do not exceed the simplified acquisition threshold if the average annual amount of the rent payable for the period of the lease does not exceed the simplified acquisition threshold.".

On page 224, strike out line 15 and all that follows through page 225, line 18, and insert in lieu thereof the following:

SEC. 4101. ACQUISITIONS GENERALLY.

On page 225, line 19, strike out "(b)" and insert in lieu thereof "(a)".

On page 225, line 22, strike out "(c)" and insert in lieu thereof "(b)".

On page 227, line 5, strike out "(d)" and insert in lieu thereof "(c)".

On page 227, strike out line 10, and insert in lieu thereof the following:

SEC. 4102. ACQUISITIONS FROM SMALL BUSINESSES.

On page 227, strike out lines 17 and 18, and insert in lieu thereof the following:

SEC. 4103. CONTRACTING PROGRAM FOR CERTAIN SMALL BUSINESS CONCERNS.

On page 268, line 7, insert "(a) INCREASED PERIOD.—" before "Section".

On page 268, between lines 17 and 18, insert the following:

(b) TECHNICAL AMENDMENT.—Section 22(d) of such Act is amended by designating the second sentence as paragraph (3).

On page 285, line 3, strike out the end quotation marks and the period following the end quotation marks.

On page 285, between lines 3 and 4, insert the following:

"(3) In conducting market research, the head of an executive agency should not require potential sources to submit more than the minimum information that is necessary to make the determinations required in paragraph (2).".

On page 286, line 4, insert "or executive orders" after "law".

On page 287, line 13, insert "(1)" after "ACCEPTANCE.—".

On page 287, line 17, strike out "'(1)" and insert in lieu thereof "'(A)".

On page 287, line 18, strike out "'(A)" and insert in lieu thereof "'(i)".

On page 287, line 20, strike out "'(B)" and insert in lieu thereof "'(ii)".

On page 287, line 23, strike out "'(2)" and insert in lieu thereof "'(B)".

On page 287, after line 25, insert the following:

"(2) The Federal Acquisition Regulation shall provide guidance to ensure that the criteria for determining commercial market acceptance include the consideration of—

"(A) the minimum needs of the executive agency concerned; and

"(B) the entire relevant commercial market, including small businesses.

On page 288, line 23, strike out the end quotation marks and the period following the end quotation marks.

On page 295, line 7, insert a comma after "section 4023(a)".

On page 295, line 9, strike out "section 4041" and insert in lieu thereof "section 4023(a)".

On page 298, line 19, insert "(a) OFFICE OF FEDERAL PROCUREMENT POLICY ACT AMENDMENT.—" before "Section".

On page 299, lines 1 and 2, strike out "subsection (a)(1)." and insert in lieu thereof "paragraph (1).".

On page 299, at the end of line 3 add the following: "The Federal Acquisition Regulation shall specify a minimum period for submission of a response to a solicitation of offers for a contract for the acquisition of commercial items.".

On page 299, between line 3 and 4, insert the following:

(b) SAVINGS PROVISION.—The deadlines for submission of offers that are in effect in accordance with section 18(a) of the Office of Federal Procurement Policy Act (41 U.S.C. 416(a)) and section 8(e) of the Small Business Act (15 U.S.C. 637(e)) shall continue to apply to contracts for the purchase of commercial items until the limits prescribed pursuant to paragraph (4) of section 18(a) of the Office of Federal Procurement Policy Act (as added by subsection (a)) are incorporated in the Federal Acquisition Regulation, as required by such paragraph.

On page 300, strike out lines 7 and 8, and insert in lieu thereof the following:

(3) subsections (a) and (d) of section 8 of the Small Business Act (15 U.S.C. 637); or

On page 303, between lines 1 and 2, insert the following:

(e) REQUIREMENT FOR CLARITY.—Officers and employees of the Federal Government who prescribe regulations to implement this Act and the amendments made by this Act shall make every effort practicable to ensure that the regulations are concise and are easily understandable by potential offerors as well as by Government officials.

On page 303, line 2, strike out "(e)" and insert in lieu thereof "(f)".

On page 303, line 19, insert at the end the following: "The report shall include the Comptroller General's evaluation of the extent to which the departments and agencies of the Federal Government, in implementing this Act and the amendments made by this Act, are reducing acquisition management layers and associated costs.".

Mr. GLENN. Mr. President, I ask unanimous consent that an analysis of the manager's amendment be printed in the RECORD.

I do not think there is any further debate. I urge adoption of the amendment.

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

MANAGER'S AMENDMENT ANALYSIS

Sec. 1014, p24 concerning agency debriefings for DOD would be clarified so that information concerning the make and model of a commercial item incorporated into a proposal need not include commercial components and on p25 so that it is clear that information provided all offerors under a resolicitation or new round of best and final offers would be the same as that which was offered to the original offers in the debriefing. Sec. 1064 regarding civilian agencies is clarified in the same manner.

Sec. 1017, p28 establishing a new two-phase selection process for DOD would be clarified to provide that the maximum number of offerors that are to be selected to participate in step two of the procedure is to be set forth in the solicitation and the definition of the two-phase procedures is removed as redundant. The same changes are made in sec. 1067 regarding two-phase procedures for civilian agencies.

Sec. 1073, p58 concerning contracts for severable services would be clarified by specifically referring to "contracts for severable services" and by providing that funds made available for a fiscal year may be obligated for the total amount of the contract.

Sec. 1091, p63 concerning OFPP Act amendments regarding consideration of past performance would be clarified to specify the type of information that may be submitted by offerors and that the OFPP Administrator shall prescribe policy regarding the retention of such information.

Sec. 1204, p68 creating a new TINA exception in title 10 for commercial items would be amended to make clear that information concerning price reasonableness may be obtained from the offeror when it is not available from other sources. The same change would be made in sec. 1251 for civilian agencies.

Sec. 1206, p70 providing for regulations regarding types of information needed to determine price reasonableness when TINA does not apply would be clarified to ensure that such information is only that which is needed for a price reasonableness determination. The same clarification would be made in sec. 1251 for civilian agencies.

Sec. 1501, p110 and sec. 1151, p116 listing items defined in the OFPP ACT referred to in titles 10 and 41 would both be amended to add "commercial component."

Sec. 2001, p125 regarding contract financing provisions for DOD would be amended by adding subparagraph (h) concerning the relationship to prompt payment requirements which was inadvertently omitted.

Sec. 1051, p133 regarding contract financing for civilian agencies would be corrected by substituting "amendment" for "amendments" and substituting "is" for "are."

Sec. 2251, p159 concerning audit authorities for civilian agencies would be amended by relocating paragraph (3) of subsection (d).

Sec. 2554, p175 requiring contracting officer responses to inquiries from small businesses would be clarified to ensure that the provision not impact the contract disputes process.

Sec. 3052, p196 concerning definition of advisory and assistance services would be clarified by removing reference to Federal Information Management Regulation.

Sec. 4011, p203 regarding new simplified acquisition threshold would be clarified by providing that regulations implementing simplified procedures provide that contracting officers consider each timely responsive offer from an eligible offeror.

Sec. 4012, p204 concerning small business reservation under the simplified acquisition threshold would be clarified to state that nothing in the section is to preclude an award pursuant to subsection (c) of section 8 of the Small Business Act.

Sec. 4013, p205 concerning prompt payment for procurements under the simplified acquisition threshold would be corrected by substituting "vests" for "will vest" and making other minor corrections.

Sec. 4014, p206 concerning procurement notice under the simplified acquisition threshold would be clarified by including a reference to the waiver of notice requirements under electronic commerce pursuant to sec. 4015.

Sec. 4015, p209 concerning electronic commerce under the simplified acquisition threshold would be clarified to provide that the FAR must specify minimum periods for notification of solicitations and deadlines for submission of offers prior to the OFPP Administrator's certification that electronic commerce has been implemented so that existing notice requirements may be waived.

Sec. 4022, p213 concerning applicability of DOD laws under the simplified acquisition threshold would be corrected by removing a typographical error.

Sec. 4072, p220 and p221 regarding simplified procedures for leases below the simplified acquisition threshold would be relocated to be under section 303g of Federal Property Act.

Sec. 4101, p224 and sec. 4102, p225 regarding the applicability of certain labor laws to the construction of vessels for DOD and civilian agencies would be removed as it was erroneously included in the bill.

Sec. 6054, p268 regarding notice period for significant changes to acquisition regulations would be clarified.

Sec. 8002, p285 concerning preference for commercial items would be clarified to ensure that agencies in conducting market research not require the submission of more than the minimum information necessary.

Sec. 8003, p286 concerning, among other things, contract clauses to be used in commercial acquisitions would be clarified to ensure that clauses required by executive orders are included in commercial solicitations.

Sec. 8003, p287 concerning, among other things, market acceptance provisions would be clarified to ensure that the FAR implementation of market acceptance include consideration of agency minimum needs and the entire relevant commercial market, including small business.

Sec. 8005, p295 and 298 concerning the applicability of certain provisions of law to contracts and subcontracts for commercial items would receive misc. technical corrections.

Sec. 8006, p299 concerning the prescription of flexible deadlines for the submission of offers for commercial items would be clarified

to ensure the FAR specify a minimum period for the submission of a response to a commercial solicitation that the deadlines in current law continue to apply until the new deadlines are implemented.

Sec. 8008, p300 concerning provisions not intended to be affected by title VIII would be clarified by adding a reference to subsection (d) of section 8 of the Small Business Act and by removing an erroneous reference to "any other provision of that Act."

Sec. 9002, p303 concerning the implementation of the Act would be clarified to provide that the implementing regulations be concise and easily understandable.

Sec. 9003, p303 concerning Comptroller General evaluation and reports on the implementation of the Act would be clarified to provide that the report include GAO's evaluation of the agencies' reduction of acquisition management layers and associated costs.

The PRESIDING OFFICER. If there be no further debate, the question is on agreeing to the amendment.

The amendment. (No. 1748) was agreed to.

Mr. GLENN. Mr. President, I move to reconsider the vote.

Mr. ROTH. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. BOND. Mr. President, I have had for some time a considerable interest in the procurement practices of the Department of Veterans Affairs. I am seeking assurance from my colleagues, the chairman, Senator GLENN, and the ranking minority member, Senator ROTH, that the provisions of this legislation do apply to that agency and its subordinate elements, including the Veterans Health Administration.

It is my understanding the title V of S. 1587 creates management incentives for the Federal bureaucracy to use commercial products when these products are found to be more cost effective.

It is my further understanding that title VIII of S. 1587 establishes a process for promoting the acquisition of commercial products. In particular, section 8002 requires commercial items be considered to fulfill agency needs. Will these provisions apply to the management practices of the Veterans Health Administration and provide incentives for them to use commercial software to meet the automation requirements for support of the VA health system including administrative, financial and clinical functions? These products are readily available and in use throughout the private sector.

Mr. ROTH. Let me assure my colleague from Missouri, Senator BOND, that it is my understanding of the provisions of S. 1587 that the Senator describes will most certainly apply to the Veterans Affairs Department and its subordinate elements including the Veterans Health Administration. It was the clear intent of the committee that the Federal bureaucracy be given incentives to use commercial products to fulfill their acquisition needs. The language of section 5051, in conjunction with the provisions of title VIII, will provide a direct financial incentive for the acquisition work force at the Department of Veterans Affairs to use commercial items to save time and money, while meeting agency requirements.

Mr. GLENN. I concur in the statements of my colleagues from Missouri and from Delaware about the intent of S. 1587.

Mr. GORTON. Mr. President, I compliment the chairman, Senator GLENN, and the ranking member, Senator ROTH, for bringing before the Senate an important piece of legislation designed to simplify and streamline our overwhelming complex Federal procurement laws. I applaud their efforts and tireless work in crafting this bill.

There is one particular provision contained in S. 1587 that I would like to clarify. It is section 4102(c), which repeals the Walsh-Healey Public Contracts Act of 1936. Recently, I learned of a small, disadvantaged business owner in my home State of Washington who was disqualified from an unrestricted procurement contract based solely on noncompliance with the Walsh-Healey Act. The businessman, Mr. Larry Ramirez, was the lowest bidder. However, because he did not meet the definition of a "regular dealer" as required by the Walsh-Healey Act, he was disqualified. Consequently, the Government had to buy from another source and ended up paying approximately $68,000 more for the products.

Numerous studies have advocated the repeal of Walsh-Healey—most recently, the report of the DOD Acquisition Law Advisory Panel and Vice President GORE's report of the National Performance Review. They concluded that Walsh-Healey was redundant because most of its provisions have been superseded by other Federal legislation.

Section 4102(c) of this bill follows that advice by repealing the Walsh-Healey Act, except for the purpose of authorizing the Secretary of Labor to define the terms "regular dealer" and "manufacturer." I learned that the committee chose this course of action because these definitions authorized in Walsh-Healey are used in a number of other laws, including the Small Business Act. Instead of amending each and every one of those statutes, the committee has instead left the definitions in place.

It is my understanding that the intent of section 4102(c) is to eliminate the requirement that a contractor meet the Walsh-Healey definitions of "regular dealer" or "manufacturer" in order to qualify for unrestricted procurement. This means that a business bidding on an unrestricted procurement contract would not be disqualified solely because it does not meet these Walsh-Healey definitions.

For restricted procurement, such as some small business set-asides, meeting those definitions may still be a requirement. Depending on the specific law governing the situation, a business may still have to adhere to the definitions of "regular dealer" or "manufacturer" in order to secure a contract. I understand that the committee did not want to dismantle the protections afforded by small business procurement laws, because these definitions help protect the Government from shady businesses or fly-by-night operations.

For specific laws where these Walsh-Healey definitions are maintained, the Secretary is authorized to issue new definitions of "regular dealer" and "manufacturer." This is because many people think the original definitions may be antiquated. With the rise of new and important business practices, such as Just-In-Time inventory, the committee felt it was desirable to allow the Secretary of Labor to issue new definitions that may take into consideration these changing business practices and climates.

I ask the distinguished chairman of the committee, Senator GLENN, and the distinguished ranking member, Senator ROTH, if my understanding of the intent of section 4102(c) is correct.

Mr. GLENN. I am happy to answer the Senator's question. This Senator from Washington [Mr. GORTON] is correct in his understanding of the intent of the provision. S. 1587 repeals the Walsh-Healey Act, except for authorizing the Secretary of Labor to define the terms "regular dealer" and "manufacturer."

Meeting the definitions of "regular dealer" and "manufacturer" found in Walsh-Healey will no longer apply to unrestricted procurement contracts, but may still apply to restricted procurement, as the Senator from Washington pointed out.

Mr. ROTH. I concur with the chairman. The Senator from Washington's understanding of section 4102(c) is correct.

Mr. GORTON. I thank both the chairman and the ranking member.

Mr. COCHRAN addressed the Chair.

The PRESIDING OFFICER. The Senator from Mississippi is recognized.

AMENDMENT NO. 1749

(Purpose: To require boards of contract appeals to provide district courts of the United States with advisory opinions when requested in certain cases)

Mr. COCHRAN. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Mississippi [Mr. COCHRAN] proposes an amendment numbered 1749.

Mr. COCHRAN. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

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

The amendment is as follows:

On page 176, between lines 2 and 3, insert the following sections:

SEC. 2555. AUTHORITY FOR DISTRICT COURTS TO OBTAIN ADVISORY OPINIONS FROM BOARDS OF CONTRACT APPEALS IN CERTAIN CASES.

Section 10 of the Contract Disputes Act of 1978 (41 U.S.C. 609) is amended by adding at the end the following new paragraph:

"(f)(1) Whenever an action involving an issue described in paragraph (2) is pending in a district court of the United States, the district court may request a board of contract appeals to provide the court with an advisory opinion on the matters of contract interpretation at issue.

"(2) An issue referred to in paragraph (1) is any issue that could be the proper subject of a final decision of a contracting officer appealable under this Act.

"(3) A district court shall direct any request under paragraph (1) to the board of contract appeals having jurisdiction under this Act to adjudicate appeals of contract claims under the contract or contracts being interpreted by the court.

"(4) Within ninety days after receiving a request for an advisory opinion under paragraph (1), a board of contract appeals shall provide the advisory opinion to the district court making the request.".

Mr. COCHRAN. Mr. President, I originally offered an amendment on this subject at the markup of this bill. The chairman, the distinguished chairman of the committee, Mr. GLENN, and the chairman of the Armed Services Committee, Mr. NUNN, asked that I withdraw it and work with their staffs prior to floor action. Both staffs were very helpful and the product of our efforts is the pending amendment.

The original amendment was offered to resolve an issue that occurs when a contract dispute involves an allegation of fraud. A contract claim is resolved through a process established by the Contract Disputes Act, whereby the dispute is adjudicated first by the contracting officer, and if appealed, by the Board of Contract Appeals or Court of Federal Claims. This process was designed to permit contract issues to be settled by experts in those areas.

If, however, there is an allegation of fraud, the entire case is turned over to the U.S. district court, which resolves the fraud and contract disagreement, under the False Claims Act. My original amendment would have permitted the contract issues to be resolved by the contracting chain, while the fraud allegations were simultaneously handled by the district court. This revised amendment continues the practice of sending the entire matter to the district courts, but permits the district court to obtain advisory opinions on specific contract issues from the board of contract appeals.

While this approach does not guarantee that the experts will decide contract matters, I believe that, in practice, the district courts will avail themselves of the assistance of the boards of contract appeals, and the process will be improved.

I appreciate very much the efforts of the majority and minority staffs of not only the Governmental Affairs and Armed Services Committees, but also of the Small Business Committee. A great deal of effort has gone into this amendment, and I feel that it represents a step in the right direction. I ask for the support of all Senators for this amendment.

The PRESIDING OFFICER. Is there further debate on the amendment?

The Senator from Ohio is recognized.

Mr. GLENN. Mr. President, Before we vote on this, let me say we have gone through this. I appreciate very much that the Senator from Mississippi was willing to withdraw his proposed amendment that day in committee.

It would have delayed the bill in committee. We would not have been able to get it out on the floor. As everybody knows, we are beginning to get short on legislative time already this year. It would have delayed the markup on the bill. We probably would not have had it out yet. The Senator very graciously agreed to withdraw it and try to work that out in the committee with his staff and our staff. They were able to do that.

I wish to thank him for that. It is great he was willing to do that. We have worked it out, and we are happy to accept this. It has been accepted on both sides now, if we wish to proceed to a vote.

The PRESIDING OFFICER. If there is no further debate on the amendment, the question is on agreeing to the amendment.

The amendment (No. 1749) was agreed to.

Mr. ROTH. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. GLENN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

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

AMENDMENT NO. 1750

Mr. GLENN. Mr. President, I send to the desk an amendment for my colleague, Senator SIMON, and Senator D'AMATO. It strikes section 3051 of the bill. That section consolidates and revises the statutory authority governing Government-owned factories and arsenals.

In striking this provision, there is not a rejection of the proposal in the bill on the merits. As I understand it, there is a feeling that the merits on this issue should be considered in the context of the overall review of depot matters and not on the streamlining bill.

This amendment has been cleared on both sides.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Ohio [Mr. GLENN] for Mr. SIMON, for himself, Ms. MOSELEY-BRAUN, and Mr. D'AMATO, proposes an amendment numbered 1750.

The amendment is as follows:

In S. 1587 strike out on page 194 line 7 through page 195 line 14 (Section 3051).

Mr. SIMON. Mr. President, Senator MOSELEY-BRAUN, Senator D'AMATO, and I are submitting this amendment on military arsenals because we question the permissiveness of the language in section 3051 of S. 1587. While we understand the Section 800 Panel looked at the arsenal laws for the Army, Navy, and Air Force and decided to consolidate the language, there is a valid reason why the regulations evolved differently over the years.

The Navy and the Air Force do not rely as heavily on arsenals as the Army does. The Army is the biggest user of our country's arsenals and owns most of them. Therefore, Congress should support the full utilization of these taxpayer-owned assets. By eliminating the language of section 3051, we wish to ensure that the military services maintain our arsenal infrastructure while at the same time giving them the flexibility to shop around for the best value.

The PRESIDING OFFICER. Is there any further debate on the amendment? If not, the question is on agreeing to the amendment.

The amendment (No. 1750) was agreed to.

Mr. GLENN. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. ROTH. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. FORD addressed the Chair.

The PRESIDING OFFICER. The Senator from Kentucky is recognized.

AMENDMENT NO. 1751

(Purpose: To make unallowable certain costs to influence legislative action by legislative bodies of political subdivisions of States)

Mr. FORD. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Kentucky [Mr. FORD] proposes an amendment numbered 1751.

Mr. FORD. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

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

The amendment is as follows:

On page 133, strike out line 22 and all that follows through page 134, line 3, and insert in lieu thereof the following:

(a) UNALLOWABILITY OF COSTS TO INFLUENCE LOCAL LEGISLATIVE BODIES.—Subsection (e)(1)(B) of section 2324 of title 10, United States Code, is amended by striking out "or a State legislature" and inserting in lieu thereof ", a State legislature, or a legislative body of a political subdivision of a State".

(b) COMPTROLLER GENERAL EVALUATION.—Section 2324 of such title is amended by striking out subsection (*l*)

(c) COVERED CONTRACT DEFINED.—Subsection (m) of such section is amended to read as follows:

On page 138, line 8, strike out "or a State legislature" and insert in lieu thereof ", a State legislature, or a legislative body of a political subdivision of a State".

Mr. FORD. Mr. President, I rise today in support of the Hatch/Ford amendment to the Federal Acquisition Streamlining Act, S. 1587. Our amendment is short and sweet and to the point. It prohibits the use of Federal funds to lobby State and local governments.

Currently, there is a prohibition against using these funds to lobby the Congress and this amendment extends this worthwhile provision down the ladder to State and local governments. What is good for us will also be good for them. As a former Governor of the great Commonwealth of Kentucky, I have seen what can happen in this area. More and more, it is important to ensure that the money we send out isn't used to improperly influence a General Assembly or a city council. Not one penny from the Federal Government should be used in this way. It is not right and this amendment will stop it.

This is good government plain and simple and I am proud to join my colleague from Utah in a bipartisan approach to preventing this type of behavior from escalating out of hand.

Mr. President, it is my understanding this amendment has been cleared on both sides. I appreciate that, and I am grateful.

We now have a prohibition of States using funds that we have appropriated for certain projects to be used to send people up here to lobby us for various and sundry programs. What this does is the reverse. It prevents the Federal bureaucrats from going down to the local communities or States and lobbying them to take on these major programs so that those who are in charge of that project will be able to spend the money.

I think if the project is good, they will get applications. They do not need to be lobbied either way. This just prohibits the lobbying of the local communities from Washington to the community.

I yield the floor.

The PRESIDING OFFICER. Is there any further debate?

Mr. GLENN. Mr. President, this has been cleared by both staff and the committees. We support the amendment as recommended by the Senator from Kentucky.

The PRESIDING OFFICER. If there is no further debate, the question is on agreeing to the amendment.

The amendment (No. 1751) was agreed to.

Mr. GLENN. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. ROTH. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

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

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

AMENDMENT NO. 1752

(Purpose: To ensure accountability for payments under simplified acquisition procedures)

Mr. GRASSLEY. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Iowa [Mr. GRASSLEY] proposes an amendment numbered 1752.

On page 205, between lines 10 and 11, insert the following:

(a) DISBURSEMENTS TO BE MATCHED WITH OBLIGATIONS.—The simplified acquisition procedures shall include procedures that ensure that each request for a disbursement is matched with a particular obligation before the disbursement is made under the payment terms provided for under subsection (a).

Mr. GRASSLEY. Mr. President, the amendment has been read in its entirety. I hope that it is recognized as what I consider to be a friendly and a clarifying amendment to the committee's amendment to section 4013 of the bill pertaining to fast payment procedures.

I ask unanimous consent that Senator ROTH be added as a cosponsor to the amendment.

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

Mr. GRASSLEY. Mr. President, I understand the committee will add language to section 4013 that certain payments can only be written against accounts with positive balances. My amendment would provide even more specific direction. It would address the committee's concerns and then some.

My amendment specifies that disbursing officials must match payments with obligations before these accelerated payments are made.

My concern about the need to match disbursements with obligations stems from a recent case of James E. McGill in Norfolk, VA. And I have spoken about this case on many occasions in morning business throughout this spring.

Using a very simple but clever scheme, Mr. McGill was able to steal $3,025,670.99 from the Military Sealift Command. He did it by submitting 114 fraudulent claims between 1989 and 1993. Mr. McGill delivered no goods and he did absolutely no work, and he had no trouble getting paid by the Military Sealift Command.

Mr. McGill operated undetected for almost 4 years. This went on for almost 4 years because the Military Sealift Command had no functioning internal controls to block the flow of money into the hands of crooked contractors like McGill. The Military Sealift Command has a standing policy of not matching disbursement with obligations. This policy leaves the Military Sealift Command's financial resources vulnerable to theft and abuse.

The payments to McGill broke every rule in the books, including the $25,000 limit for small, open purchases. Mr. McGill was caught. He pleaded guilty and was sentenced to 7 years and 3 months in prison on May 12 of this year.

My amendment would require that disbursements covered by Section 4013 be matched with obligations before those payments are made. I understand the need for making prompt payment on work performed in accordance with the terms of a contract. That is very good. But disbursing officials must always check first to determine that payments are legitimate. This matching procedure is the purpose of my amendment and it will accomplish that purpose.

I yield the floor.

Mr. GLENN. Mr. President, I compliment Senator GRASSLEY for bringing this up. One of the things that came out of some of our committee hearings was the fact that these disbursements were being made sometimes in very, very large amounts of money; up in the billions were being made on occasion where no bills had even been sent in by the contractors—one example in addition to the ones that Senator GRASSLEY just mentioned.

So I think this is good. Before we go to a vote on this, one area I wanted to have checked—and staff is checking on that right now—is what this might prompt as far as administrative requirements not in place right now. Obviously, we are in favor of having the kind of matching that Senator GRASSLEY wants, but I would propose we wait just a few moments before we vote on this amendment so we can perhaps get an answer to some questions I and my staff had.

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

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

Mr. GLENN. Mr. President, we are prepared to vote on the amendment now and recommend its acceptance. It has been accepted on both sides.

The PRESIDING OFFICER. Is there any further debate on the amendment? If not, the question is on agreeing to the amendment.

So the amendment (No. 1752) was agreed to.

Mr. GLENN. Mr. President, I move to reconsider the vote.

Mr. ROTH. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

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

The PRESIDING OFFICER (Mrs. BOXER). Without objection, it is so ordered.

MORNING BUSINESS

Mr. FORD. Madam President, I ask unanimous consent that there now be a period for morning business with Senators permitted to speak therein for up to 5 minutes.

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

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

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

MESSAGES FROM THE HOUSE RECEIVED DURING ADJOURNMENT

Under the authority of the order of January 5, 1993, the Secretary of the Senate on May 26, 1994, during the adjournment of the Senate, received a message from the House of Representatives announcing that the Speaker has signed the following enrolled bill and joint resolution:

S. 1654. An act to make certain technical corrections; and

S.J. Res. 179. Joint resolution to designate the week of June 12 through 19, 1994, as "National Men's Health Week."

The enrolled bill and joint resolution were signed on May 26, 1994, during the adjournment of the Senate, by the President pro tempore [Mr. BYRD].

Under the authority of the order of January 5, 1993, the Secretary of the Senate on May 26, 1994, during the adjournment of the Senate, received a message from the House of Representatives announcing that the House has agreed to the following concurrent resolution; without amendment:

S. Con. Res. 70. Concurrent resolution providing for a conditional recess or adjournment of the Senate on Wednesday, May 25, 1994, Thursday, May 26, 1994, Friday, May 27, 1994, or Saturday, May 28, 1994, until Tuesday, June 7, 1994, and a conditional adjournment of the House on Thursday, May 26, 1994, until Wednesday, June 8, 1994.

The message also announced that in the conference on the disagreeing votes of the two Houses on the bill (H.R. 3841) to amend the Bank Holding Company Act of 1956, the Revised Statutes of the United States, and the Federal Deposit Insurance Act to provide for interstate banking and branching," the Speaker appoints Mr. MAZZOLI to serve in lieu of Mr. BROOKS, resigned.

The message further announced that pursuant to the provisions of 22 United States Code, 1928a, the Speaker appoints the following Members to the United States Group of the North Atlantic Assembly on the part of the House: Mr. ROSE, Chairman, Mr. HAMILTON, Vice Chairman, Mr. BROOKS, Mr. COLEMAN, Mr. SOLOMON, and Mr. BEREUTER.

The message also announced that the Speaker has signed the following enrolled bills:

H.R. 965. An act to provide for toy safety and for other purposes.

H.R. 1632. An act to amend title 11, District of Columbia Code, and Part C of title IV of the District of Columbia Self-Government and Government Reorganization Act to remove gender-specific references.

H.R. 3863. An act to designate the Post Office building located to 401 E. South Street in Jackson, Mississippi, as the "Medgar Wiley Evers Post Office."

The enrolled bills were signed on June 7, 1994, by the President pro tempore [Mr. BYRD].

MESSAGES FROM THE HOUSE

At 1:39 p.m., a message from the House of Representatives, delivered by Mr. Hays, one of its reading clerks, announced that the House has passed the following bills; in which it requests the concurrence of the Senate:

H.R. 3676. An act to amend the District of Columbia Spouse Equity Act of 1938 to provide for coverage of the former spouses of judges of the District of Columbia courts.

H.R. 3839. An act to designate the United States Post Office located at 220 South 40th Avenue in Hattiesburg, Mississippi, as the "Roy M. Wheat Post Office."

H.R. 3984. An act to designate the United States Post Office located at 212 Coleman Avenue in Waveland, Mississippi, as the "John Longo, Jr. Post Office."

H.R. 4205. An act to amend 11, D.C. Code, to clarify that blind individuals are eligible to serve as jurors in the Superior Court of the District of Columbia.

H.R. 4385. An act to amend title 23, United States Code, to designate the National Highway System, and for other purposes.

H.R. 4454. An act making appropriations for the Legislative Branch for the fiscal year ending September 30, 1995, and for other purposes.

MEASURES REFERRED

The following bills were read the first and second time by unanimous consent, and referred as indicated:

H.R. 3839. An act to designate the United States Post office located at 220 South 40th Avenue in Hattiesburg, Mississippi, as the "Roy M. Wheat Post Office"; to the Committee on Governmental Affairs.

H.R. 3984. An act to designate the United States post Office located at 212 Coleman Avenue in Waveland, Mississippi, as the "John Longo, Jr. Post Office"; to the Committee on Governmental Affairs.

H.R. 4385. An act to amend title 23, United States Code, to designate the National Highway System, and for other purposes; to the Committee on Environment and Public Works.

H.R. 4454. An act making appropriations for the Legislative Branch for the fiscal year ending September 30, 1995, and for other purposes; to the Committee on Appropriations.

MEASURES PLACED ON THE CALENDAR

The following measures were read the second time by unanimous consent and placed on the calendar:

S. 2122. A bill to improve the public and private financing of long-term care and to strengthen the public safety net for elderly and non-elderly disabled individuals who lack adequate protection against long-term care expenses, and for other purposes.

S. 2129. A bill to amend title 18, United States Code, to preserve personal privacy with respect to medical records and health care-related information, and for other purposes.

S. 2137. A bill to designate certain National Forest lands in the State of Montana as wilderness, to release other National Forest lands in the State of Montana for multiple use management, and for other purposes.

H.R. 2108. A bill to make improvements in the Black Lung Benefits Act.

S. 2153. A bill to improve access to quality health care, to reform medical malpractice liability standards, to reduce paperwork and simplify administration of health care claims, to establish safe harbors from the application of the antitrust laws for certain activities of providers of health care services, to prevent fraud and abuse in the health care delivery system, 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-2750. A communication from the President of the United States, transmitting, pursuant to law, a report concerning extension

of waiver authority for the People's Republic of China; to the Committee on Finance.

EC-2751. A communication from the President of the United States, transmitting, pursuant to law, a report concerning extension of waiver authority; to the Committee on Finance.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. ROCKEFELLER, from the Committee on Veterans' Affairs, with an amendment in the nature of a substitute:

S. 1908. A bill to provide for a study of the processes and procedures of the Department of Veterans Affairs for the disposition of claims for veterans' benefits (Rept. No. 103-280).

TREATY REPORTED DURING THE ADJOURNMENT

Under authority of an order of the Senate of May 18, 1994, Mr. PELL, for the Committee on Foreign Relations, reported favorably on June 2, 1994, the following treaty, together with a recommended resolution of advice and consent to ratification with three reservations, an understanding, a declaration, and a proviso, and with a printed report—Ex. Report. 103-29: International Convention on the Elimination of All Forms of Racial Discrimination (Ex. C, 95-2).

The text of the ratification resolution as reported by the committee:

Resolved (two-thirds of the Senators present concurring therein), That the Senate advise and consent to the ratification of the International Convention on the Elimination of All Forms of Racial Discrimination, adopted by the United Nations General Assembly on December 21, 1965 and signed on behalf of the United States on September 28, 1966 (Executive C, 95-2), subject to the following Reservations, Understanding, Declaration, and Proviso:

I. The Senate's advice and consent is subject to the following reservations:

(1) That the Constitution and laws of the United States contain extensive protections of individual freedom of speech, expression and association. Accordingly, the United States does not accept any obligation under this Convention, in particular under Articles 4 and 7, to restrict those rights, through the adoption of legislation or any other measures, to the extent that they are protected by the Constitution and laws of the United States.

(2) That the Constitution and laws of the United States establish extensive protections against discrimination, reaching significant areas of non-governmental activity. Individual privacy and freedom from governmental interference in private conduct, however, are also recognized as among the fundamental values which shape our free and democratic society. The United States understands that the identification of the rights protected under the Convention by reference in Article 1 to fields of "public life" reflects a similar distinction between spheres of public conduct that are customarily the subject of governmental regulation, and spheres of private conduct that are not. To the extent, however, that the Convention calls for a broader regulation of private conduct, the United States does not accept any obligation under this Convention to enact legislation or take other measures under paragraph (1) of Article 2, subparagraphs (1) (c) and (d) of Article 2, Article 3 and Article 5 with respect to private conduct except as mandated by the Constitution and laws of the United States.

(3) That with reference to Article 22 of the Convention, before any dispute to which the United States is a party may be submitted to the jurisdiction of the International Court of Justice under this article, the specific consent of the United States is required in each case.

II. The Senate's advice and consent is subject to the following understanding, which shall apply to the obligations of the United States under this Convention:

That the United States understands that this Convention shall be implemented by the Federal Government to the extent that it exercises jurisdiction over the matters covered therein, and otherwise by the state and local governments. To the extent that state and local governments exercise jurisdiction over such matters, the Federal Government shall, as necessary, take appropriate measures to ensure the fulfillment of this Convention.

III. The Senate's advice and consent is subject to the following declaration:

That the United States declares that the provisions of the Convention are not self-executing.

IV. The Senate's advice and consent is subject to the following proviso, which shall not be included in the instrument of ratification to be deposited by the President:

Nothing in this Convention requires or authorizes legislation, or other action, by the United States of America prohibited by the Constitution of the United States as interpreted by the United States.

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mrs. MURRAY:

S. 2159. A bill to amend title 46, United States Code, to prevent certain masters and seaman from being taxed on wages by more than one State or political subdivision thereof, and for other purposes; to the Committee on Finance.

By Mr. DANFORTH (for himself and Mr. BOREN):

S. 2160. A bill to amend the Internal Revenue Code of 1986 to replace the corporate income tax with a broad-based business activities tax, to provide relief from such tax for individuals with moderate incomes, and for other purposes; to the Committee on Finance.

By Mr. RIEGLE (for himself, Mr. FEINGOLD, and Mr. PRYOR):

S. 2161. A bill to amend title XVI of the Social Security Act to improve work incentives for people with disabilities; to the Committee on Finance.

By Mrs. FEINSTEIN (for herself, Mrs. MURRAY, Mr. D'AMATO, and Mr. LIEBERMAN):

S. 2162. A bill to provide protection from sexual predators; to the Committee on the Judiciary.

By Mr. SARBANES (for himself and Ms. MIKULSKI):

S. 2163. A bill to recognize the organization known as the 29th Division Associated, Inc.; to the Committee on the Judiciary.

By Mr. MITCHELL (for Mr. SASSER):

S. 2164. A bill to authorize the Secretary of the Interior to carry out a program to be known as the Junior Duck Stamp Conservation and Design Program, and for other purposes; to the Committee on Environment and Public Works.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. BROWN (for himself and Mr. NICKLES):

S. Res. 219. A resolution expressing the sense of the Senate regarding the issuance under Title VII of the Civil Rights Act of 1964 of administrative guidelines applicable to religious harassment in employment; to the Committee on Labor and Human Resources.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mrs. MURRAY:

S. 2159. A bill to amend title 46, United States Code, to prevent certain masters and seamen from being taxed on wages by more than one State or political subdivision thereof, and for other purposes; to the Committee on Finance.

TRANSPORTATION EMPLOYEE EQUITABLE TREATMENT ACT OF 1994

• Mrs. MURRAY. Madam President, I introduce the Transportation Employee Equitable Treatment Act of 1994.

In 1979 and again in 1990, the Congress wisely passed legislation that exempted interstate transportation workers from paying income taxes to States in which they do not reside. This legislation was based on common sense. It was based on the belief that taxation without representation is wrong.

In the previous bills, working women and men in the air transportation were covered. So were ground and rail workers. But, our Nation's waterway workers were somehow left out of the mix.

Madam President, this legislation corrects that oversight. It allows Americans who work on ships, tugs, and other types of vessels that operate in waters shared by more than one State to pay income taxes only in their State of residence. I think all Americans would agree that this is fair.

Some people might not think this legislation is very important, but I can assure you, Madam President, the workers on Washington State's border waterways do. Members of this body might not think $1,000 or $2,000 per year is a lot of money, but workers on Washington State's border waterways do. And, I do, too.

This legislation is supported by the American Pilots Association, the International Organization of Masters, Mates & Pilots, American Waterways

Operators, Seafarers International Union, American Maritime Officers, and Inland Boatmen's Union.

By introducing this bill, I am joining forces with my good friend in the other body, Congresswoman JOLENE UNSOELD. Congresswoman UNSOELD has shown great leadership on this issue and I wish to applaud her efforts to correct this inequity.

Madam President, I ask unanimous consent that the bill be printed in the RECORD.

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

S. 2159

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 "Transportation Employee Equitable Treatment Act of 1994".

SEC. 2. EQUITABLE TREATMENT FOR INDIVIDUALS EMPLOYED ON VESSELS WITH RESPECT TO STATE AND LOCAL TAXES.

Section 11108 of title 46, United States Code, is amended—

(1) by inserting "(a)" before the first sentence;

(2) in subsection (a) (as designated by paragraph (1))—

(A) by inserting "or other income" after "Wages";

(B) by striking "noncontiguous trade or" and inserting "noncontiguous trade, to"; and

(C) by inserting after "fish processing vessel" the following: ", or to a pilot licensed under section 7101 or licensed or authorized under the laws of a State and engaged on a vessel"; and

(3) by adding at the end the following new subsection:

"(b) An individual who regularly performs services in more than one State on a vessel as a master or seaman or as a pilot licensed under section 7101 or licensed or authorized under the laws of a State, may not be subject to the laws of any State or political subdivision of a State (other than the State and political subdivision of the State in which the individual resides) that impose a tax or fee on the privilege of performing such services or on gross receipts or income received for such services.".●

By Mr. DANFORTH (for himself and Mr. BOREN):

S. 2160. A bill to amend the Internal Revenue Code of 1986 to replace the corporate income tax and a broad-based business activities tax, to provide relief from such tax for individuals with moderate incomes, and for other purposes to the Committee on Finance.

COMPREHENSIVE TAX RESTRUCTURING AND SIMPLIFICATION ACT OF 1994

● Mr. DANFORTH. Mr. President, I am pleased to join with my good friend and colleague from Oklahoma, Senator DAVID L. BOREN, in introducing the Comprehensive Tax Restructuring and Simplification Act of 1994, a comprehensive proposal which attempts to fix much of what is broken in the present Federal income tax system. This legislation is among the most ambitious plans for tax reform to be offered in many years. The complexity of the issues involved and the magnitude of the changes suggests that this package is only a first volley. We do not pretend to have all the answers. We do believe that the bill is a responsible plan which balances good tax and economic policy, political feasibility and fairness issues.

Democrats, Republicans, public servants and private citizens, rich and poor, all recognize that the current means by which the Federal Government collects revenue is a mess. The sheer complexity of the system and the cost of compliance breeds resentment. Further, the system adversely impacts the competitiveness of U.S. businesses as compared with their foreign counterparts, discourages savings and investment, and creates serious biases that distort economic decisions.

The corporate income tax system contains some of the most complex and arcane rules in all of the tax code, including the rules for depreciation, alternative minimum tax, transfer pricing, foreign tax credits and uniform capitalization. Costs to comply with such rules are outrageous. For example, a 1990 study by the Tax Foundation concluded that compliance costs for businesses were $112 billion—an incredible 75 percent of net income tax revenue from such businesses. This means that businesses were paying $75 to find out they owed $100. Small businesses—under $1 million in assets—fared even worse. Their tax compliance costs were estimated in 1900 to be $15.9 billion—an unbelievable 390 percent of net income tax revenue from such businesses. In other words, the small businesses are forced to spend $390 to find out that they owe the Government $100. This is absurd.

Further, the Federal income tax system puts U.S. goods at a competitive disadvantage compared with foreign goods, to the detriment of our performance in increasingly competitive world markets. The income tax on business profits was written in and evolved in a different era. The U.S. system of taxing both domestic and international businesses was conceived in the late 1920's, when global competition between multinationals and substantial international movement of capital was rare. Domestic companies competed amongst themselves, and all were subject to the same tax system. Immediately after World War II, U.S. firms dominated world commerce and investment, and cross-border investment was modest. Although each country had its own insular taxing system, the U.S. economy was so powerful that foreign countries' tax systems were virtually irrelevant, and foreign companies presented no serious competition in our domestic market. The reality now is a global market with many strong trading partners.

The international trend is to rely heavily on some form of a national, border-adjustable consumption tax. However, unlike all our major trading partners, and 80 countries in total, the United States has not adopted a consumption tax which is border-adjustable—that is, tax is rebated on exports and levied on imports. Thus, we are penalizing ourselves. To illustrate, a U.S. manufacturer must bear the full cost of U.S. corporate income taxes and payroll taxes, regardless of whether it exports its goods or sells them domestically. However, those exported goods will face a second tax on reaching the border of a country that has a value-added tax [VAT]. In a sense, the exports are taxed twice, rather than once as the products with which they compete. Exporters from VAT countries, however, have the VAT rebated on all their exports to the United States and face little or no new taxes, other than tariffs, when the products enter the United States. This discrimination is a penalty we inflict on ourselves by ignoring the advantages of a border-adjustable consumption tax. If the United States replaces some or all of current business taxes with border-adjustable taxes, the playing field would be leveled considerably.

The Federal income tax system also discourages savings and investment primarily because it taxes the return on savings and new investment. As a result, the United States has the lowest national savings rate—2.5 percent of GNP—of any industrialized country. A low savings rate leads to reduced investment, lower economic growth, fewer jobs, and a lower standard of living. In addition, the United States has an investment rate that is lower than all of our trading partners. Over the past 30 years, the average investment rate in Japan was 2½ times that of the United States, while Germany's rate has been more than two-thirds greater. Low investment in U.S. companies results in higher investment costs which increase the cost of capital in the United States, disadvantaging U.S. investment relative to foreign investment.

Finally, the Federal income tax structure creates serious biases that distort economic decisions. For example, there is a bias in favor of debt financing compared with equity financing because interest paid by corporations is deductible yet dividends paid to equity holders are taxed. The buyout boom of the 1980's, which resulted in widespread failures of debt-laden companies, is often cited as a result of the favored treatment of debt.

Moreover, the system is increasingly immune to improvement. Many studies have been done on the problems of subchapter C, but no meaningful actions have been taken. For example, a study that was begun in 1986 was completed by Treasury 6 years later with no meaningful solutions to the many problems cited by such officials.

For these reasons, modest changes and reforms are not sufficient. Tinkering at the margin of the current tax code cannot adequately address the core problems and could prove to be counterproductive. The income tax system has been bled dry—we must change the system dramatically to restore it to health.

The Comprehensive Tax Restructuring and Simplification Act of 1994 is an attempt to craft much-needed Federal income tax reform. The package repeals the corporate income tax, cuts the payroll tax and increases the standard deduction—cutting $400 billion in revenue. To replace the $400 billion in revenue, the package includes a business activities tax [BAT] which is simple to comply with and compute, border-adjustable and economically neutral. In addition, according to the Joint Committee on Taxation, the Danforth-Boren proposal is revenue neutral.

Repealing the corporate income tax would relieve businesses from figuring out and complying with the most complex provisions of current corporate tax law including, depreciation, uniform capitalization, the alternative minimum tax, transfer pricing rules and foreign tax credits.

The package also cuts the payroll tax in half for employers and employees. Cutting the payroll tax will benefit all businesses, particularly labor-intensive and small businesses which may pay more in payroll taxes than in income taxes. For small businesses, payment of payroll taxes represents one of the greatest tax burdens on their operations and acts as a disincentive to employ workers. The payroll tax cuts will not affect the Social Security Trust Fund because revenues from the BAT will be used to replace the lost revenue.

In addition, the Danforth-Boren proposal triples the standard deduction for low- and middle-income Americans. This will remove at least 20 million Americans from the tax rolls. The sheer number of Americans removed from the tax rolls will reduce administrative costs with little loss in revenue. Further, the proposal provides lower-income Americans with a quarterly BAT refund, similar to the current earned income tax credit.

To replace the $400 billion in lost revenue, the package includes a business activities tax. This tax is simply computed by subtracting the gross cost of property and services used by a business—business purchases—from the company's gross receipts from its sales of goods and services. The resulting amount equals the company's total business activity and is subject to a flat tax rate of 14.5 percent. If business purchases exceed gross receipts, the taxpayer would get a refund.

We chose this subtraction method to compute BAT liability, rather than the credit-invoice method used by most other countries, for a number of reasons. First, this method offers the simplest and most familiar means to compute the tax because it allows a company to use its most basic financial data—gross sales and purchases—when computing the tax. In addition, all U.S. businesses are familiar with the business activities tax methodology because the computations are the same as the computations under the Federal income tax—that is, gross income minus deductions equals taxable income.

The BAT is also border-adjustable so that it can be levied on imports and removed from exports, consistent with the rules of international trade. This change will level the playing field for U.S. companies, allowing them to compete fairly with foreign competitors in both United States and foreign markets.

Further, the BAT is an economically neutral tax. The BAT eliminates the current bias in favor of borrowing capital by denying deductions for interest paid on debt. Moreover, it applies equally to labor and capital—for example, equipment and machinery—because it does not allow a deduction for compensation or for interest paid on debt used to finance the purchase of capital. In this way, there is no bias toward using either more or less capital or labor.

Finally, the business activities tax removes 15 million businesses from the tax rolls by exempting certain small companies, those with gross receipts of $100,000 or less, from the BAT. This exemption will cut the number of taxpayers from 24 million to nine million, slash government administrative costs by 33 percent, while lowering government revenues by less than three percent.

Mr. President, I ask unanimous consent that the text of the Comprehensive Tax Restructuring and Simplification Act of 1994, accompanying technical explanation prepared by staff and Senator BOREN's comments be included in the RECORD.

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

S. 2160

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 "Comprehensive Tax Restructuring and Simplification Act of 1994".

SEC. 2. AMENDMENT OF 1986 CODE.

Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1986.

TITLE I—REPEAL OF CORPORATE INCOME TAX

SEC. 101. REPEAL OF CORPORATE INCOME TAX.

(a) IN GENERAL.—Chapter 1 (relating to normal taxes and surtaxes) is amended by adding at the end the following new subchapter:

"Subchapter W—Termination of Corporate Income Tax

"Sec. 1400. Termination of corporate income tax.

"Sec. 1401. Corporate distributions.

"Sec. 1402. Election of certain businesses to be taxed as domestic corporations.

"SEC. 1400. TERMINATION OF CORPORATE INCOME TAX.

"(a) TERMINATION.—Except as provided in this section, no tax shall be imposed under this chapter on any corporation for any taxable year.

"(b) PASSIVE INVESTMENT TAX.—

"(1) IMPOSITION OF TAX.—

"(A) IN GENERAL.—If, for any taxable year—

"(i) a C corporation has nonbusiness gross income, and

"(ii) the percentage determined by dividing the nonbusiness gross income by the gross income of the C corporation for such taxable year exceeds the applicable working capital percentage,

then there is hereby imposed on such corporation a tax in the amount determined under subparagraph (B).

"(B) AMOUNT OF TAX.—The amount of tax determined under this subparagraph shall be equal to the product of—

"(i) the nonbusiness gross income described in paragraph (1)(A), and

"(ii) the highest rate of tax under section 1 for taxable years beginning in the same calendar year as the taxable year of the C corporation.

"(C) NO CREDIT AGAINST TAX.—No credit shall be allowed under this chapter against the tax imposed by subparagraph (A).

"(D) SPECIAL RULE FOR FOREIGN CORPORATIONS.—No tax shall be imposed under subparagraph (A) on any foreign corporation unless the foreign corporation is exempt from the tax imposed by section 884 (relating to branch profits tax).

"(2) REDUCTION FOR CERTAIN DISTRIBUTIONS.—

"(A) IN GENERAL.—The amount of the nonbusiness gross income for any taxable year shall be reduced by the aggregate amount of any distributions by the corporation to its shareholders with respect to its stock—

"(i) which are made during the taxable year and not taken into account under clause (ii) for the preceding taxable year, or

"(ii) which—

"(I) are made after the close of the taxable year and on or before the 45th day following the close of the taxable year, and

"(II) are designated, at such time and in such manner as the Secretary may prescribe, as distributions for purposes of this paragraph.

"(B) INCLUSION IN INCOME.—Any distribution described in subparagraph (A)(ii) shall be included in the gross income of the shareholder for the shareholder's taxable year which includes the last day of the taxable year of the corporation for which the reduction under subparagraph (A) was made.

"(3) DEFINITIONS.—For purposes of this subsection—

"(A) APPLICABLE WORKING CAPITAL PERCENTAGE.—

"(i) IN GENERAL.—The Secretary shall establish an applicable working capital percentage which, on the basis of the best information available, represents the ratio which the average nonbusiness gross income of corporations which is derived from assets held

to provide reasonably required working capital bears to the average gross income of corporations.

"(ii) ADJUSTMENTS.—The Secretary may prescribe more than one percentage under clause (i) to reflect differences in industries, size, or other factors which affect reasonably required working capital.

"(B) NONBUSINESS GROSS INCOME.—For purposes of this subsection—

"(i) IN GENERAL.—The term 'nonbusiness gross income' means gross income other than gross income from a business activity (determined in the same manner as under chapter 100).

"(ii) EXCEPTIONS.—The term 'nonbusiness gross income' shall not include any gross income derived from a transaction to the extent the gross receipts from the transaction are not taken into account under chapter 100 by reason of section 10016.

"(4) SPECIAL RULES.—For purposes of this subsection—

"(A) AGGREGATION RULES.—The Secretary shall prescribe regulations providing for the aggregation of 2 or more persons to the extent appropriate to carry out the purposes of this section.

"(B) STARTUP COMPANIES.—A corporation shall not be treated as described in paragraph (1) for the first taxable year the corporation has gross income if—

"(i) no predecessor of the corporation was described in paragraph (1),

"(ii) it is established to the satisfaction of the Secretary that the corporation will not be described in paragraph (1) for either of the 1st 2 taxable years following such first taxable year, and

"(iii) the corporation is not described in paragraph (1) for either of such 2 taxable years.

"(C) COMPANIES CHANGING BUSINESS.—A corporation shall not be treated as described in paragraph (1) for any taxable year if—

"(i) neither the corporation nor any predecessor was described in paragraph (1) for any taxable year,

"(ii) it is established to the satisfaction of the Secretary that—

"(I) substantially all of the nonbusiness gross income of the corporation for the taxable year is attributable to proceeds from the disposition of 1 or more active trades or businesses, and

"(II) the corporation will not be described in paragraph (1) for either of the 1st 2 taxable years following the taxable year, and

"(iii) the corporation is not described in paragraph (1) for either of such 2 taxable years.

"(D) COMPUTATION OF GROSS RECEIPTS.—In determining gross income for purposes of this subsection, gross receipts for any taxable year shall be reduced by returns and allowances made during such taxable year, and bad debt deductions for such taxable year.

"(E) PASSIVE FOREIGN INVESTMENT COMPANY INTERESTS.—Any taxpayer who owns (or is treated under section 1297(a) as owning) stock in a passive foreign investment company shall be treated as owning stock in a qualified electing fund without regard to whether the requirements of paragraphs (1) and (2) of section 1295(a) are met.

"(c) EXCEPTION FOR CERTAIN TAXES ON FOREIGN CORPORATIONS.—Subsection (a) shall not apply to any tax imposed by section 881 or 884.

"SEC. 1401. CORPORATE DISTRIBUTIONS.

"(a) IN GENERAL.—Except as provided in subsection (b), all distributions made by a corporation to a shareholder with respect to its stock shall be treated as ordinary income of the shareholder.

"(b) EXCEPTIONS.—Except as provided in regulations, subsection (a) shall not apply to any distribution—

"(1) which is pursuant to a plan of liquidation,

"(2) which is in complete redemption of all of a shareholder's stock in the corporation,

"(3) in the case of a corporation which maintains adequate accounts of its earnings and profits, which does not constitute a dividend under section 316, or

"(4) which represents a return of capital to the extent the distribution does not exceed the shareholder's contributions to capital during the 60-day period ending with the date of the distribution.

This subsection shall not apply to any distribution to which section 1400(b)(2) applies.

"SEC. 1402. ELECTION OF CERTAIN BUSINESSES TO BE TAXED AS DOMESTIC CORPORATIONS.

"(a) GENERAL RULE.—If an election is made under this section with respect to any business which is not a C corporation—

"(1) such business shall be treated as a domestic C corporation for purposes of this subtitle (other than chapter 2 thereof), and

"(2) each owner of an equity interest in such business shall be treated as a shareholder thereof in proportion to such interest.

"(b) ELECTION.—

"(1) IN GENERAL.—An election under this section—

"(A) shall be made not later than 2½ months after the close of the first taxable year to which it applies, and

"(B) shall remain in effect until terminated as provided in paragraph (2).

"(2) TERMINATION.—An election may be terminated by an entity if made not later than 2½ months after the beginning of the first taxable year to which the termination applies. A taxpayer terminating an election under this paragraph may not make an election under paragraph (1) for any succeeding taxable year without the consent of the Secretary.

"(c) SPECIAL RULES.—For purposes of this section—

"(1) FRINGE BENEFITS.—Notwithstanding subsection (a), a business to which subsection (a) applies shall not be treated as a domestic C corporation for purposes of applying the provisions of this subtitle which relate to employee fringe benefits (within the meaning of section 1372).

"(2) CORPORATE DISTRIBUTIONS AND ADJUSTMENTS.—The Secretary shall provide regulations to provide for the application of subchapter C of this chapter to distributions (including liquidations) from a business to which subsection (a) applies and to organizations and reorganizations of such a business."

(b) CONFORMING AMENDMENT.—The table of subchapters for chapter 1 is amended by adding at the end the following new item:

"SUBCHAPTER W. Termination of corporate income tax."

SEC. 102. TECHNICAL AND CONFORMING CHANGES.

The Secretary of the Treasury shall, not later than 6 months after the date of the enactment of this Act, submit to the Congress such technical and conforming changes as are necessary to implement the amendments made by this title.

TITLE II—INDIVIDUAL INCOME TAX RELIEF

SEC. 201. REDUCTION OF OASDI PAYROLL TAX RATE BY 50 PERCENT.

(a) REDUCTION OF RATE.—

(1) EMPLOYEES.—Subsection (a) of section 3101 (relating to old-age, survivors, and disability insurance) is amended to read as follows:

"(a) OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE.—In addition to other taxes, there is hereby imposed on the income of every individual a tax equal to 3.1 percent of the wages (as defined in section 3121(a)) received by such individual with respect to employment (as defined in section 3121(b))."

(2) EMPLOYERS.—Subsection (a) of section 3111 (relating to old-age, survivors, and disability insurance) is amended to read as follows:

"(a) OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE.—In addition to other taxes, there is hereby imposed on every employer an excise tax, with respect to having individuals in such employer's employ, equal to 3.1 percent of the wages (as defined in section 3121(a)) paid by such employer with respect to employment (as defined in section 3121(b))."

(3) SELF-EMPLOYED.—Subsection (a) of section 1401 (relating to old-age, survivors, and disability insurance) is amended to read as follows:

"(a) OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE.—In addition to other taxes, there shall be imposed for each taxable year, on the self-employment income of every individual, a tax equal to 6.2 percent of the amount of self-employment income for such taxable year."

(b) TRANSFER OF REVENUES TO TRUST FUNDS TO REFLECT REDUCED TAXES.—

(1) OAS TRUST FUND.—Section 201(a) of the Social Security Act (42 U.S.C. 401(a)) is amended by striking "and" at the end of paragraph (3), by striking the period at the end of paragraph (4) and inserting "; and", and by inserting after paragraph (4) the following new paragraph:

"(5) such percentage of the taxes imposed by subtitle K of the Internal Revenue Code of 1986 (relating to business activities tax) as the Secretary of the Treasury determines is necessary to equal the amounts appropriated by clause (4)."

(2) DI TRUST FUND.—Section 201(b) of such Act (42 U.S.C. 401(b)) is amended by striking "and" at the end of paragraph (1), by striking the period at the end of paragraph (2) and inserting "; and", and by inserting after paragraph (2) the following new paragraph:

"(3) such percentage of the taxes imposed by subtitle K of the Internal Revenue Code of 1986 (relating to business activities tax) as the Secretary of the Treasury determines is necessary to equal the amounts appropriated by clause (2)."

(3) CONFORMING AMENDMENTS.—

(A) Section 201(a) of such Act (42 U.S.C. 401(a)) is amended—

(i) by striking "amounts equivalent to 100 per centum of" in the matter preceding paragraph (1) and inserting "amounts equivalent to",

(ii) by inserting "100 per centum of" before "the taxes" in paragraphs (1), (2), (3), and (4),

(iii) by striking "clauses (3) and (4)" each place it appears and inserting "clauses (3), (4), and (5)", and

(iv) by striking "clauses (1) and (2)" and inserting "clauses (1), (2), and (3)".

(B) Section 201(b) of such Act (42 U.S.C. 401(b)) is amended—

(i) by striking "amounts equivalent to 100 per centum of" in the matter preceding paragraph (1) and inserting "amounts equivalent to",

(ii) by inserting "100 per centum of" before "(A) ½ of 1 per centum" in paragraph (1),

(iii) by striking "and before January 1, 2000, and so reported, and (P) 1.42 per centum

of the wages (as so defined) paid after December 31, 1999, and so reported," in paragraph (1) and inserting "and before January 1 of the year following the date of the enactment of the Comprehensive Tax Restructuring and Simplification Act, and so reported, (P) .60 per centum of the wages (as so defined) paid on and after January 1 or such year, and before January 1, 2000, and so reported, and (Q) .71 per centum of the wages (as so defined) paid after December 31, 1999, and so reported,",

(iv) by inserting "100 per centum of" before "(A) ⅜ of 1 per centum" in paragraph (2), and

(v) by striking "and before January 1, 2000, and (P) 1.42 per centum of the self-employment income (as so defined) so reported for any taxable year beginning after December 31, 1999," in paragraph (2) and inserting "and before January 1 of the year following the date of the enactment of the Comprehensive Tax Restructuring and Simplification Act, (P) .60 per centum of the self-employment income (as so defined) so reported for any taxable year beginning on or after January 1 of such year, and before January 1, 2000, and (Q) .71 per centum of the self-employment income (as so defined) so reported for any taxable year beginning after December 31, 1999,".

SEC. 202. INCREASE IN STANDARD DEDUCTION.

(a) IN GENERAL.—Subsection (f) of section 63 (defining taxable income) is amended—

(1) by redesignating paragraphs (1) through (4) as paragraphs (2) through (5), respectively,

(2) by inserting before paragraph (2) (as so redesignated) the following new paragraph:

"(1) ADDITIONAL AMOUNTS FOR LOW-INCOME TAXPAYERS.—

"(A) IN GENERAL.—The taxpayer shall be entitled to an additional amount equal to—

"(i) $8,650 in the case of—

"(I) a joint return, or

"(II) a surviving spouse (as defined in section 2(a)),

"(ii) $7,600 in the case of a head of household (as defined in section 2(b)),

"(iii) $5,200 in the case of an individual who is not married and who is not a surviving spouse or head of household, or

"(iv) $4,325 in the case of a married individual filing a separate return.

"(B) PHASE OUT OF ADDITIONAL AMOUNT.—

"(i) IN GENERAL.—Each dollar amount contained in subparagraph (A) shall be reduced (but not below 0) by $20 for each $100 (or fraction thereof) by which the individual's adjusted gross income for such taxable year exceeds the applicable amount.

"(ii) APPLICABLE AMOUNT.—For purposes of clause (i), the applicable amount for a taxpayer described in—

"(I) subparagraph (A)(i), is $45,000,

"(II) subparagraph (A)(ii), is $37,000,

"(III) subparagraph (A)(iii), is $27,000, and

"(IV) subparagraph (A)(iv), is $22,500.

"(C) ADJUSTMENTS FOR INFLATION.—In the case of any taxable year beginning after the first calendar year beginning after the effective date of this paragraph, each dollar amount contained in subparagraphs (A) and (B)(ii) shall be increased by an amount equal to—

"(i) such dollar amount, multiplied by

"(ii) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, by substituting 'the calendar year in which the effective date of section 63(f)(1) occurs' for 'calendar year 1992' in subparagraph (B) thereof.", and

(3) by striking "AGED" in the heading and inserting "LOW-INCOME, AGED,".

(b) CONFORMING AMENDMENTS.—

(1) Section 1(f)(6) is amended by inserting "section 63(f)(1)(C)," after "63(c)(4),".

(2) The heading for section 63(c)(3) is amended by striking "AGED" and inserting "LOW-INCOME, AGED,".

(3) Section 63(c)(4) is amended by inserting "(other than paragraph (1))" after "or subsection (f)".

SEC. 203. INDIVIDUAL REFUNDABLE TAX CREDIT.

(a) IN GENERAL.—Subpart C of part IV of subchapter A of chapter 1 (relating to refundable personal credits) is amended by inserting after section 32 the following new section:

"SEC. 32A. INDIVIDUAL TAX CREDIT.

"(a) ALLOWANCE OF CREDIT.—

"(1) IN GENERAL.—In the case of an individual, there shall be allowed as a credit against the tax imposed by this subtitle for the taxable year an amount equal to the product of—

"(A) so much of the taxpayer's adjusted gross income for such taxable year as does not exceed the adjusted gross income amount, and

"(B) the rate of tax under section 10001 for the calendar year in which the taxable year begins.

"(2) ADJUSTED GROSS INCOME AMOUNT.—For purposes of paragraph (1), the adjusted gross income amount in the case of—

"(A) a joint return or a surviving spouse (as defined in section 2(a)), is $9,500,

"(B) a head of household (as defined in section 2(b)), is $7,900,

"(C) an individual who is not married and who is not a surviving spouse or head of household, is $5,700, and

"(D) a married individual filing a separate return, is $4,750.

"(b) PHASE OUT OF CREDIT AMOUNT.—

"(1) IN GENERAL.—The amount determined under subsection (a)(1) shall be reduced (but not below 0) by $20 for each $100 (or fraction thereof) by which the individual's modified adjusted gross income for such taxable year exceeds the applicable amount.

"(2) APPLICABLE AMOUNT.—For purposes of paragraph (1), the applicable amount for a taxpayer described in—

"(A) subsection (a)(2)(A), is $15,000,

"(B) subsection (a)(2)(B), is $13,200,

"(C) subsection (a)(2)(C), is $9,000, and

"(D) subsection (a)(2)(D), is $7,500.

"(3) MODIFIED ADJUSTED GROSS INCOME.—For purposes of paragraph (1), the term 'modified adjusted gross income' means adjusted gross income—

"(A) determined without regard to sections 135, 911, 931, and 933,

"(B) without regard to the deduction allowable under section 219,

"(C) increased by the amount of social security benefits not included in gross income under section 86, and

"(D) increased by the amount of interest received or accrued by the taxpayer during the taxable year which is exempt from tax.

"(c) ADJUSTMENTS FOR INFLATION.—In the case of any taxable year beginning after the first calendar year beginning after the effective date of this section, each dollar amount contained in subsections (a)(2) and (b)(2) shall be increased by an amount equal to—

"(1) such dollar amount, multiplied by

"(2) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, by substituting 'the calendar year in which the effective date of section 32A occurs' for 'calendar year 1992' in subparagraph (B) thereof."

"(d) APPLICABLE RULES.—Rules similar to the rules of subsections (d), (e), (g), and (h) of section 32 shall apply to any credit to which this section applies."

(b) ADVANCE PAYMENT OF CREDIT.—Chapter 25 (relating to general provisions relating to employment taxes) is amended by inserting after section 3507 the following new section:

"SEC. 3507A. ADVANCE PAYMENT OF INDIVIDUAL TAX CREDIT.

"(a) GENERAL RULE.—Except as otherwise provided in this section, every employer making payment of wages with respect to whom an individual tax credit eligibility certificate is in effect shall, at the time of paying such wages, make an additional payment equal to such employee's individual tax credit advance amount.

"(b) INDIVIDUAL TAX CREDIT ELIGIBILITY CERTIFICATE.—For purposes of this title, an individual tax credit eligibility certificate is a statement furnished by an employee to the employer which—

"(1) certifies that the employee will be eligible to receive the credit provided by section 32A for the taxable year,

"(2) certifies that the employee does not have an individual tax credit eligibility certificate in effect for the calendar year with respect to the payment of wages by another employer,

"(3) states whether or not the employee's spouse has an individual tax credit eligibility certificate in effect, and

"(4) estimates the individual's adjusted gross income and modified adjusted gross income for the calendar year.

For purposes of this section, a certificate shall be treated as being in effect with respect to a spouse if such a certificate will be in effect on the first status determination date following the date on which the employee furnishes the statement in question.

"(c) INDIVIDUAL TAX CREDIT ADVANCE AMOUNT.—

"(1) IN GENERAL.—For purposes of this title, the term 'individual tax credit advance amount' means, with respect to any payroll period, the amount determined—

"(A) on the basis of the employee's wages from the employer for such period,

"(B) on the basis of the employee's estimated adjusted gross income and modified adjusted gross income included in the individual tax credit eligibility certificate, and

"(C) in accordance with tables provided by the Secretary.

"(2) ADVANCE AMOUNT TABLES.—The tables referred to in paragraph (1)(C) shall be similar in form to the tables prescribed under section 3402 and, to the maximum extent feasible, shall be coordinated with such tables and the tables prescribed under section 3507(c).

"(d) OTHER RULES.—For purposes of this section, rules similar to the rules of subsections (d) and (e) of section 3507 shall apply.

"(e) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this section."

(c) CONFORMING AMENDMENT.—Section 1(f)(6), as amended by section 202(b)(1), is amended by inserting "section 32A(c)," before "63(c)(4),".

(d) CLERICAL AMENDMENTS.—

(1) The table of sections for subpart A of part IV of subchapter A of chapter 1 is amended by inserting after the item relating to section 32 the following new item:

"Sec. 32A. Individual tax credit."

(2) The table of sections for chapter 25 is amended by adding after the item relating to section 3507 the following new item:

"Sec. 3507A. Advance payment of individual tax credit."

TITLE III—BUSINESS ACTIVITIES TAX

SEC. 301. BUSINESS ACTIVITIES TAX IMPOSED.

The Internal Revenue Code of 1986 is amended by adding at the end the following new subtitle:

"Subtitle K—Business Activities Tax

"CHAPTER 100. Business activities tax.

"CHAPTER 100—BUSINESS ACTIVITIES TAX

"SUBCHAPTER A. Imposition of tax.

"SUBCHAPTER B. Computation of tax.

"SUBCHAPTER C. General rules.

"SUBCHAPTER D. Special rules.

"SUBCHAPTER E. Refunds; small business exemption.

"SUBCHAPTER F. Definitions.

"SUBCHAPTER G. Administration.

"Subchapter A—Imposition of Tax

"Sec. 10001. Tax imposed.

"SEC. 10001. TAX IMPOSED.

"In the case of any person engaged in any business activity, there is hereby imposed for each taxable period a tax in an amount equal to 14.5 percent of the taxable amount.

"Subchapter B—Computation of Tax

"Sec. 10011. Taxable amount.

"Sec. 10012. Business activity.

"Sec. 10013. Activities not treated as business activity.

"Sec. 10014. Gross receipts from business activities.

"Sec. 10015. Business purchases.

"Sec. 10016. Exemption for certain nontaxable exchanges.

"SEC. 10011. TAXABLE AMOUNT.

"(a) IN GENERAL.—For purposes of this chapter, the term 'taxable amount' means the amount by which—

"(1) the gross receipts of any person from business activities for a taxable period, exceed

"(2) the business purchases of such person for the taxable period.

"(b) CROSS REFERENCES.—For special rules, see sections 10022, 10032, and 10034.

"SEC. 10012. BUSINESS ACTIVITY.

"For purposes of this chapter, the term 'business activity' means—

"(1) the sale of property or services in the United States by any person in connection with a business,

"(2) the import of property or services into the United States, or

"(3) the export of property or services from the United States in connection with a business.

"SEC. 10013. ACTIVITIES NOT TREATED AS BUSINESS ACTIVITY.

"For purposes of this chapter, the term 'business activity' does not include—

"(1) the performance of services by an employee for the employee's employer, or

"(2) any import of an article that is free of duty under chapter 98 of the Harmonized Tariff Schedule of the United States.

"SEC. 10014. GROSS RECEIPTS FROM BUSINESS ACTIVITIES.

"(a) IN GENERAL.—For purposes of this chapter, the term 'gross receipts' means all receipts from a business activity.

"(b) EXCHANGES.—For purposes of this chapter, the amount treated as gross receipts from the exchange of property or services is the fair market value of the property or services received, plus any money received.

"(c) EXPORTS AND IMPORTS.—

"(1) EXPORTS OF PROPERTY OR SERVICES.—For treatment of exports, see section 10031.

"(2) IMPORTS OF PROPERTY OR SERVICES.—For treatment of imports, see section 10032.

"(3) INTERNATIONAL TRANSPORTATION.—For treatment of international transportation services, see section 10033.

"(d) CERTAIN INSURANCE PROCEEDS.—For purposes of this chapter, the term 'gross receipts' includes the proceeds of property and casualty insurance for losses in connection with business property or services.

"(e) TAXES.—For purposes of this chapter, the term 'gross receipts' includes any excise tax, sales tax, customs duty, or other separately stated levy imposed by a Federal, State, or local government on property or services sold in a business activity received or collected by the seller in connection with the sale. Gross receipts shall not include any tax imposed by chapter 31, 32, 33, 34, 35, 36, 39, 51, 52, or 53.

"(f) TRANSFERS TO RELATED PERSONS.—

"(1) IN GENERAL.—For purposes of this chapter, any transfer of property or services to a related person shall be treated as a sale of such property or services for an amount equal to the fair market value of the property or services.

"(2) RELATED PERSON.—For purposes of this subsection, the term 'related person' means—

"(A) in the case of an employment relationship, an employer and employee,

"(B) in the case of any entity, an owner of the entity,

"(C) any person specified in regulations, and

"(D) any member of the family (within the meaning of section 267(c)(4)) of any individual described in subparagraph (A), (B), or (C).

"(3) OWNER.—For purposes of paragraph (2), the term 'owner' means—

"(A) the proprietor of a sole proprietorship, and

"(B) any holder of a beneficial interest in a corporation, partnership, trust, or other entity.

"SEC. 10015. BUSINESS PURCHASES.

"(a) IN GENERAL.—For purposes of this chapter, the term 'business purchase' means any amount paid or incurred to purchase property or services for use in a business activity other than—

"(1) amounts the payment of which is unlawful under Federal, State, or local law, or

"(2) except as provided in subsection (d)—

"(A) interest,

"(B) premiums for insurance other than property and casualty insurance, or

"(C) other implicit intermediation fees.

"(b) COMPENSATION EXPENSE NOT INCLUDED.—The term 'business purchase' does not include any amount paid or incurred as current or deferred compensation to employees, or for employee benefits.

"(c) EXPORTS AND IMPORTS.—

"(1) EXPORTS.—For treatment of exports, see section 10033(b)(1).

"(2) IMPORTS.—For treatment of imports, see section 10032.

"(3) INTERNATIONAL TRANSPORTATION.—For treatment of international transportation services, see section 10033.

"(d) FINANCIAL INTERMEDIATION SERVICES.—

"(1) IN GENERAL.— For purposes of this chapter, business purchases include amounts allocable to the business activity for which a person has received notice under section 10034(d) (relating to implicit financial intermediation fees) and which have otherwise not been taken into account.

"(2) CROSS REFERENCE.—For additional treatment of financial intermediation services, see section 10034.

"(e) EXCHANGES.—For purposes of this chapter, the amount treated as paid or incurred for business purchases in connection with the exchange of property or services is the fair market value of the property or services exchanged, plus any money paid.

"(f) TAXES.—For purposes of this chapter, the term 'business purchase' includes any excise tax, sales tax, customs duty, or other separately stated levy imposed by a Federal, State, or local government on property or services purchased for use in a business activity.

"(g) GAMBLING PAYMENTS.—Except as provided in subsection (a)(1), in the case of a business activity involving gambling, lotteries, or other games of chance, business purchases include amounts paid to winners.

"SEC. 10016. EXEMPTION FOR CERTAIN NONTAXABLE EXCHANGES.

"(a) GENERAL RULE.—For purposes of this chapter, gross receipts shall not include gross receipts from an applicable nontaxable transaction except to the extent attributable to money or other property received in the transaction.

"(b) APPLICABLE NONTAXABLE TRANSACTIONS.—For purposes of this section, the term 'applicable nontaxable transaction' means any transaction—

"(1) to which section 332, 351, 368, or 721 applies, or

"(2) which is specified by the Secretary and with respect to which gain is not recognized in whole or in part under chapter 1.

"Subchapter C—General Rules

"Sec. 10021. Accounting methods.

"Sec. 10022. Governmental entities and exempt organizations.

"Sec. 10023. Post-sale price adjustments and refunds; bad debts.

"Sec. 10024 Source rules.

"Sec. 10025. Transfer in satisfaction of debt.

"Sec. 10026. Conversions.

"SEC. 10021. ACCOUNTING METHODS.

"(a) IN GENERAL.—Except as provided in this section, a person subject to tax under this chapter may use any of the following methods of accounting for purposes of this chapter:

"(1) The cash receipts and disbursements method.

"(2) An accrual method.

"(3) Any other method permitted by the Secretary.

The Secretary may require a person to modify any method to clearly reflect gross receipts and business purchases.

"(b) CONSISTENCY REQUIREMENT.—All persons which are members of a controlled group of corporations which does not elect to be treated as one person for purposes of this chapter under section 10063(a)(2) shall use the same method of accounting for purposes of this chapter.

"(c) SPECIAL RULES FOR LONG-TERM CONTRACTS.—

"(1) IN GENERAL.—In the case of any sale pursuant to a long-term contract (as defined in section 460(f))—

"(A) the seller shall use the percentage of completion method in computing gross receipts from the contract, and

"(B) the purchaser shall use the cash receipts and disbursements method in computing business purchases from the contract.

"(2) REPORTING.—The Secretary may require taxpayers to file statements containing such information with respect to long-

term contracts as the Secretary may prescribe.

"(d) INSTALLMENT METHOD PROHIBITED.—Gross receipts from the sale of property shall not be taken into account for purposes of this chapter under the installment method.

"SEC. 10022. GOVERNMENTAL ENTITIES AND EXEMPT ORGANIZATIONS.

"(a) GOVERNMENTAL ENTITIES.—For purposes of this chapter, the transfer of property or furnishing of services by a governmental entity with respect to any of the following activities shall be treated as a business activity:

"(1) Public utility services.

"(2) Mass transit services.

"(3) Postal services.

"(4) Any activity not involving the exercise of any essential governmental function (within the meaning of section 115).

"(b) EXEMPT ORGANIZATIONS.—For purposes of this chapter—

"(1) IN GENERAL.—Except as provided in this subsection, the transfer of property or furnishing of services by an exempt organization shall be treated as a business activity.

"(2) EXCEPTION FOR SECTION 501 (C)(3) ORGANIZATIONS.—Paragraph (1) shall not apply to an exempt organization described in section 501(c)(3) unless the activity constitutes an unrelated trade or business (within the meaning of section 513) of the organization.

"(c) GROSS RECEIPTS.—If there is no separately stated charge with respect to any transfer or furnishing to which subsection (a) or (b) applies, gross receipts shall be determined on the basis of the fair market value of the property transferred or services furnished.

"(d) ALLOCATION.—The Secretary shall by regulation provide for the proper allocation of gross receipts and business purchases between business activities and other activities.

"(e) SELF-CONSUMPTION OF PROPERTY OR SERVICES.—Notwithstanding the provisions of this section, the Secretary may by regulation provide that property produced, or services furnished, by a governmental entity or an exempt organization for use by itself are to be treated as sold in a business activity if such treatment is necessary to carry out the purposes of this chapter. In any such case the taxable amount shall be determined by reference to the fair market value of the property or services.

"SEC. 10023. POST-SALE PRICE ADJUSTMENTS AND REFUNDS; BAD DEBTS.

"(a) PRICE ADJUSTMENTS AND REFUNDS.—

"(1) RECEIPT TREATED AS REDUCTION IN BUSINESS PURCHASES.—If a person subject to tax under this chapter receives a post-sale price adjustment attributable to a business purchase which was taken into account in computing the taxable amount for a prior taxable period, then the amount of such adjustment shall be treated as a reduction in business purchases for the taxable period in which it is received.

"(2) ISSUANCE TREATED AS REDUCTION IN GROSS RECEIPTS.—If a person subject to tax under this chapter issues a post-sale price adjustment for a sale the gross receipts from which were taken into account in computing the taxable amount for a prior taxable period, then the amount of such adjustment shall be treated as a reduction in gross receipts for the taxable period in which it is issued.

"(3) POST-SALE PRICE ADJUSTMENT.—For purposes of this subsection, the term 'post-sale price adjustment' means a refund, rebate, or other price allowance attributable to a sale of property or services.

"(b) BAD DEBTS.—

"(1) SELLER.—

"(A) WRITEOFFS AND WRITEDOWNS.—If an amount owed to a seller of business property or services that was taken into account as gross receipts in computing the taxable amount of the seller for a prior taxable period becomes wholly or partially uncollectible during any subsequent taxable period, then the seller shall treat the amount (or part thereof that is uncollectible) as a reduction in gross receipts for the taxable period in which it becomes wholly or partially uncollectible.

"(B) NOTICE.—Whenever a seller treats an amount as wholly or partially uncollectible under subparagraph (A), the seller shall notify the purchaser of the amount the seller is treating as uncollectible. The notice shall set forth with specificity the purchase or purchases to which the treatment relates and shall be sent to the purchaser at the purchaser's last known address within 10 days after close of the taxable period in which the seller treats the amount as wholly or partially uncollectible.

"(C) RECOVERIES.—If a seller receives payment for an amount that was treated as a reduction in gross receipts under subparagraph (A) in a prior taxable period, then the seller shall treat the payment as a gross receipt for the taxable period in which it is received.

"(2) PURCHASER.—

"(A) WRITEOFFS AND WRITEDOWNS.—If a purchaser receives notice under paragraph (1)(B) from a seller for all or a portion of the amount owed for business property or services that the purchaser treated as a business purchase in a prior taxable period, then the purchaser shall treat such amount as a reduction in business purchases for the taxable period in which the notice is received.

"(B) REPAYMENTS.—If a purchaser pays all or part of an amount treated as a reduction in business purchases under subparagraph (A) in a prior taxable period, then the purchaser shall treat the amount paid as a business purchase for the taxable period in which the payment is made.

"SEC. 10024. SOURCE RULES.

"(a) SALES OF PROPERTY.—For purposes of this chapter, a sale of property shall be treated as occurring in the United States if the property is located in the United States at the time of the sale.

"(b) SALES OF SERVICES.—

"(1) GENERAL RULE.—For purposes of this chapter, a sale of services shall be treated as occurring in the United States to the extent that—

"(A) the services are provided from a place of business, or with respect to property, in the United States, or

"(B) the services are incidental to the provision of services within the United States.

"(2) CROSS REFERENCE.—For treatment of international transportation services, see section 10033.

"SEC. 10025. TRANSFER IN SATISFACTION OF DEBT.

"For purposes of this chapter, the transfer of property or services by a debtor to a creditor in exchange for a reduction of debt shall be treated as a sale of such property or services for an amount equal to the amount by which the debt is reduced.

"SEC. 10026. CONVERSIONS.

For purposes of this chapter, any conversion of property or services from use in a business activity to use in any other activity, or from use in any other activity to use in a business activity, shall be treated as a sale of the property or services for their fair market value.

"Subchapter D—Special Rules

"Sec. 10031. Exports of property or services.
"Sec. 10032. Imports of property or services.
"Sec. 10033. International transportation services.
"Sec. 10034. Financial intermediation services.
"Sec. 10035. Other special rules.

"SEC. 10031. EXPORTS OF PROPERTY OR SERVICES.

"(a) GENERAL RULE.—For purposes of this chapter, the term 'gross receipts' does not include amounts received by the exporter thereof for property or services exported from the United States for use or consumption outside the United States.

"(b) EXPORT THROUGH NONBUSINESS ENTITY.—For purposes of subsection (a), if property or services are sold to a governmental entity or exempt organization for export and are exported other than in a business activity of such entity or organization, then the seller of such property or services is deemed to be the exporter thereof.

"SEC. 10032. IMPORTS OF PROPERTY OR SERVICES.

"(a) IN GENERAL.—For purposes of this chapter, the taxable amount with respect to the import of property or services for use or consumption within the United States is the sum of—

"(1) the amount paid or incurred for the property or services, plus

"(2) in the case of property, any amounts paid or incurred for transportation costs (if such costs are not included in the amount paid for the property).

"(b) IMPORTS OF PREVIOUSLY EXPORTED PROPERTY.—

"(1) IN GENERAL.—For purposes of this chapter, the taxable amount for any import of property that is returned to the United States—

"(A) after export for repairs or alterations abroad, or

"(B) after export to undergo assembly, processing, manufacture, or other changes in condition abroad,

is the net cost to the importer of such repairs, alterations, assembly, processing, manufacture, or other change in condition.

"(2) LIMITATION FOR PREVIOUSLY EXPORTED PROPERTY.—Paragraph (1) shall apply only to property—

"(A) that the importer acquired before export, and

"(B) as to which there has been no transfer of ownership between the time of export and import.

"(c) BUSINESS PURCHASES OF IMPORTS.—For purposes of this chapter—

"(1) IN GENERAL.—The term 'business purchase' includes—

"(A) the amount determined under subsection (a) for property or services, plus

"(B) the amount of tax payable under this chapter with respect to the import of such property or services.

"(2) BUSINESS ACTIVITY REQUIRED.—A person may not include any amount described in paragraph (1) in business purchases unless the person uses the property or services in a business activity.

"SEC. 10033. INTERNATIONAL TRANSPORTATION SERVICES.

"(a) GROSS RECEIPTS.—For purposes of this chapter—

"(1) EXPORTS.—The term 'gross receipts' does not include receipts from transportation of property exported from the United States.

"(2) IMPORTS.—The term 'gross receipts' does not include receipts from the transportation of property imported into the United

States unless such receipts are not taken into account under section 10032 in computing the taxable amount with respect to the property.

"(b) BUSINESS PURCHASES.—For purposes of this chapter—

"(1) EXPORTS.—The term 'business purchase' does not include amounts paid or incurred for transportation of property exported from the United States.

"(2) IMPORTS.—For treatment as business purchases of amounts paid or incurred for transportation of property imported into the United States, see section 10032(c).

"(c) INTERNATIONAL TRANSPORTATION OF PASSENGERS.—For purposes of this chapter—

"(1) GROSS RECEIPTS.—Gross receipts—

"(A) include receipts from the transportation of passengers from outside the United States to a destination in the United States, but

"(B) do not include receipts from the transportation of passengers from the United States to a destination outside the United States.

"(2) BUSINESS PURCHASES.—Business purchases—

"(A) include amounts paid or incurred in a business activity for the transportation of passengers from outside the United States to a destination in the United States, but

"(B) do not include amounts paid or incurred in a business activity for the transportation of passengers from the United States to a destination outside the United States.

"SEC. 10034. FINANCIAL INTERMEDIATION SERVICES.

"(a) GENERAL RULE.—For purposes of this chapter—

"(1) the providing of financial intermediation services shall be treated as a business activity, and

"(2) this chapter shall be applied to the business activity by substituting financial receipts and adjusted business purchases properly allocable to such business activity for gross receipts and business purchases.

"(b) FINANCIAL RECEIPTS.—For purposes of this section, the term 'financial receipts' means all receipts other than amounts received as contributions to capital.

"(c) ADJUSTED BUSINESS PURCHASES.—For purposes of this section, the term 'adjusted business purchases' means business purchases, adjusted as follows:

"(1) PRINCIPAL AND INTEREST.—Business purchases include any principal or interest payments properly allocable to the business activity described in subsection (a). The preceding sentence shall not apply to any principal or interest payments otherwise allocable to business purchases (determined without regard to this section or section 10015(b)).

"(2) FINANCIAL INSTRUMENTS.—Notwithstanding section 10051(3), business purchases include the cost of, and payments under, financial instruments (other than financial instruments representing equity interests in the person subject to the tax imposed by this chapter).

"(3) INSURANCE CLAIMS.—Business purchases include claims and cash surrender values paid in connection with insurance or reinsurance services.

"(4) REINSURANCE.—Business purchases include amounts paid for reinsurance.

"(d) REPORTING TO CUSTOMERS.—

"(1) ALLOCATION AND REPORTING.—

"(A) IN GENERAL.—A person engaged in the business activity of providing financial intermediation services shall—

"(i) allocate fees received for such services (other than services for which separately stated fees are charged) among recipients of such services on a reasonable and consistent basis, and

"(ii) report to each recipient the fees so allocated.

"(B) TIMING.—The report under subparagraph (A)(ii) shall be furnished to the recipient no later than the 45th day after the close of a taxable period.

"(2) EXCEPTION.—The Secretary shall establish procedures under which notice need not be given under this subsection to persons with respect to whom services are not provided in connection with a business activity.

"(e) DEFINITIONS.—For purposes of this section—

"(1) FINANCIAL INTERMEDIATION SERVICE.—The term 'financial intermediation service' means—

"(A) lending services,

"(B) insurance services,

"(C) market-making and dealer services, and

"(D) any other service provided as a business activity in which a person acts as an intermediary in—

"(i) the transfer of property, services, or financial assets, liabilities, risks, or instruments (or income or expense derived therefrom) between two or more other persons, or

"(ii) the pooling of economic risk among other persons,

and derives all or a portion of such person's gross receipts from streams of income or expense, discounts, or other financial flows associated with the matter with respect to which such person is acting as an intermediary.

"(2) LENDING SERVICES.—The term 'lending services' means the regular making of loans and providing credit to, or taking deposits from, customers, but does not include an installment or delayed payment arrangement provided by a seller of property or services under which additional charges or fees are imposed by the seller for late payment and for which no interest is charged.

"(3) MARKET-MAKING OR DEALER SERVICES.—The term 'market-making or dealer services' means services provided by a person who—

"(A) regularly purchases financial instruments from or sells financial instruments to customers in the ordinary course of a trade or business, or

"(B) regularly offers to enter into, assume, offset, assign, or otherwise terminate positions in financial instruments with customers in the ordinary course of a trade or business.

"SEC. 10035. OTHER SPECIAL RULES.

"(a) EXCHANGES CLASSIFIED BY CONSIDERATION GIVEN.—For purposes of this chapter—

"(1) an exchange of property for property or services is treated as a sale of property, and

"(2) an exchange of services for property or services is treated as a sale of services,

without regard, in either instance, to whether other consideration is received.

"(b) SPECIAL RULE WHERE SALE OF PROPERTY INCLUDES INCIDENTAL SALE OF SERVICES.—For purposes of this chapter, if in connection with the sale of any property there is an incidental sale of services, such sale of services shall be treated as part of the sale of such property.

"(c) SPECIAL RULE WHERE SALE OF SERVICES INCLUDES INCIDENTAL SALE OF PROPERTY.—For purposes of this chapter, if in connection with the sale of any services there is an incidental sale of property, such sale of property shall be treated as part of the sale of such services.

"Subchapter E—Refunds; Small Business Exemption

"Sec. 10041. Refund for excess business purchase periods.

"Sec. 10042. Small business exemption.

"SEC. 10041. REFUND FOR EXCESS BUSINESS PURCHASE PERIODS.

"(a) CREDIT ALLOWED.—There shall be allowed as a credit against the tax imposed by section 10001 for any taxable period an amount equal to the amount determined under subsection (b), multiplied by the tax rate provided in section 10001 in effect for such period.

"(b) DETERMINATION OF AMOUNT.—

"(1) IN GENERAL.—For purposes of subsection (a), the amount determined under this subsection for any taxable period is the amount by which—

"(A) the business purchases of any person for a taxable period, exceed

"(B) the gross receipts of that person for such period.

"(2) GOVERNMENTAL ENTITIES.—For purposes of paragraph (1), the business purchases of a governmental entity subject to tax under this chapter for a business activity shall be reduced by the amount of any subsidy provided for that activity. For purposes of this paragraph, the term 'subsidy' includes the value of property or services used in such activity for which no amount was paid or incurred, together with any amounts paid or obligated from appropriated funds (except to the extent that such funds represent operating revenues or other receipts from the activity).

"(c) REFUND OR CREDIT OF AMOUNT.—The amount of the credit allowed under subsection (a) for any taxable period is treated as an overpayment of the tax imposed by section 10001 for that taxable period.

"SEC. 10042. SMALL BUSINESS EXEMPTION.

"(a) EXEMPTION.—Except as provided in subsection (b), if the aggregate amount of gross receipts of any person for any taxable period and the 3 preceding taxable periods does not exceed the exemption amount, no tax shall be imposed under this chapter (and no credit shall be allowed under section 10041) for the taxable period.

"(b) EXCEPTIONS.—

"(1) PERSON MUST ALWAYS BE EXEMPT.—Subsection (a) shall not apply to any person for a taxable period unless the person was exempt from the tax imposed by this chapter for all preceding taxable periods.

"(2) ELECTION.—Subsection (a) shall not apply to any person for a taxable period if the person elects not to have subsection (a) apply for the taxable period.

"(c) STATEMENTS.—A person to which this section applies for any taxable period shall file a statement containing such information as the Secretary may prescribe.

"(d) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

"(1) EXEMPTION AMOUNT.—The term 'exemption amount' means $100,000 (or an equivalent amount if the taxable period is not a calendar quarter).

"(2) PERSONS NOT ENGAGED IN BUSINESS FOR ENTIRE PERIOD.—If a person was not engaged in a business activity for the entire period referred to in subsection (a), such subsection shall be applied on the basis of the period the person was so engaged.

"(3) PREDECESSORS.—Any reference in this section to a person shall include a reference to any predecessor of the person.

"Subchapter F—Definitions

"Sec. 10051. Definitions.

"SEC. 10051. DEFINITIONS.

"For purposes of this chapter—

"(1) SALE OF SERVICES.—The term 'sale of services' means the performance of services for consideration, and includes—

"(A) the granting of the right to use property, whether tangible or intangible, for consideration, and

"(B) the granting of a right to the performance of services or to reimbursement (including the granting of warranties, insurance, and similar items) for consideration.

"(2) SALE OF PROPERTY.—The term 'sale of property' means the transfer of ownership of property from a seller to a purchaser for consideration.

"(3) PROPERTY.—The term 'property' means any tangible or intangible property, other than money or any financial instrument.

"(4) BUSINESS.—The term 'business' includes any activity carried on continuously or regularly, whether or not for profit, that involves or is intended to involve the sale of property or services.

"(5) BUSINESS PROPERTY OR SERVICE.—The term 'business property or service' means any property or service the sale of which by the owner or provider thereof would be a business activity or which is used by the owner or provider in a business activity.

"(6) EMPLOYEE.—The term 'employee' has the same meaning as when such term is used for purposes of chapter 24 (relating to withholding).

"(7) PERSON.—The term 'person' has the meaning given such term by section 7701(a)(1), but also includes any governmental entity.

"(8) UNITED STATES.—The term 'United States', when used in a geographic sense, includes the customs territory of the United States (as defined in General Headnote 2 of the Harmonized Tariff Schedules of the United States) and any area seaward of the States lying within the outer boundaries of the outer continental shelf (as defined in section 1331 of title 43, United States Code).

"(9) GOVERNMENTAL ENTITY.—The term 'governmental entity' means the United States, any State or political subdivision thereof, the District of Columbia, a Commonwealth or possession of the United States, or any agency or instrumentality of any of the foregoing.

"(10) EXEMPT ORGANIZATION.—The term 'exempt organization' means any organization exempt from taxation under section 501 (c) or (d).

"(11) FINANCIAL INSTRUMENT DEFINED.—The term 'financial instrument' means any—

"(A) share of stock in a corporation,

"(B) partnership or beneficial ownership interest in a widely held or publicly traded partnership or trust,

"(C) note, bond, debenture, or other evidence of indebtedness,

"(D) interest rate, currency, or equity notional principal contract,

"(E) evidence of an interest in, or a derivative financial instrument in, any financial instrument described in subparagraph (A), (B), (C), or (D), or any currency, including any option, forward contract, short position, and any similar financial instrument in such a financial instrument or currency, and

"(F) position which—

"(i) is not a financial instrument described in subparagraph (A), (B), (C), (D), or (E),

"(ii) is a hedge with respect to such a financial instrument, and

"(iii) is clearly identified in the dealer's records as being described in this subparagraph before the close of the day on which it was acquired or entered into (or such other time as the Secretary may by regulations prescribe).

"(12) USE INCLUDES HELD FOR USE.—Property or services held for use by any person shall be treated as used by that person.

"Subchapter G—Administration

"Sec. 10061. Liability for tax.

"Sec. 10062. Time for filing return; taxable period.

"Sec. 10063. Treatment of related businesses.

"Sec. 10064. Secretary to be notified of certain events.

"Sec. 10065. Regulations.

"SEC. 10061. LIABILITY FOR TAX.

"The person selling or importing property or services shall be liable for the tax imposed by section 10001.

"SEC. 10062. TIME FOR FILING RETURN; TAXABLE PERIOD.

"(a) FILING RETURN.—Before the sixteenth day of the second calendar month beginning after the close of each taxable period, each person subject to tax under this chapter shall file a return of the tax imposed by section 10001 for such taxable period.

"(b) TAXABLE PERIOD.—For purposes of this chapter—

"(1) IN GENERAL.—The term 'taxable period' means a calendar quarter, except that if a taxpayer has a taxable year under chapter 1 other than the calendar year, then such term means a quarter of that taxable year.

"(2) OTHER PERIODS.—To the extent provided in regulations, the term 'taxable period' includes a period selected by a person other than a calendar quarter.

"(3) AUTHORITY TO SHORTEN LENGTH OF TAX PERIOD.—The Secretary may shorten the length of a person's taxable period under this subsection to the extent the Secretary deems such action necessary to protect the revenue.

"SEC. 10063. TREATMENT OF RELATED BUSINESSES.

"(a) GENERAL RULE.—For purposes of this chapter—

"(1) AFFILIATED GROUPS AND BUSINESSES UNDER COMMON CONTROL.—Except to the extent otherwise provided in regulations—

"(A) an affiliated group of corporations (as defined in section 1504(a) without regard to paragraphs (2), (4), and (7) of section 1504(b)), or

"(B) two or more businesses (whether or not incorporated) under common control within the meaning of section 52(b) and the regulations thereunder,

shall be treated as one person.

"(2) CONTROLLED GROUP.—A controlled group of corporations, as defined in section 1563(a) (determined without regard to the second sentence of paragraph (4) of such section and without regard to section 1563(e)(3)(C)), may elect to be treated as one person.

"(b) RELATED PARTY TRANSACTIONS.—For purposes of this chapter, transactions in the United States between corporations or other businesses that are treated, or that may elect to be treated, as one person under subsection (a) shall not be taken into account in computing the gross receipts or business purchases of any such corporation or business.

"SEC. 10064. SECRETARY TO BE NOTIFIED OF CERTAIN EVENTS.

"To the extent provided in regulations, each person engaged in a business shall notify the Secretary (at such time or times as may be prescribed by regulation) of—

"(1) any change in the form in which the business is conducted, and

"(2) any other change that might affect—

"(A) the liability for the tax imposed by section 10001,

"(B) the amount of such tax or any credit against such tax, or

"(C) the administration of such tax in the case of such person.

"SEC. 10065. REGULATIONS.

"The Secretary shall prescribe such regulations as may be necessary to carry out the provisions of this chapter."

SEC. 302. REFUND AUTHORITY.

Section 6402 (relating to authority to make credits or refunds) is amended by designating subsection (h) as subsection (j) and by inserting after subsection (g) the following new subsection:

"(h) REPAYMENT OF BUSINESS ACTIVITIES TAX.—Within 45 days after the date on which a business activities tax return is filed pursuant to section 10062 showing an overpayment, the Secretary shall make, to the extent the Secretary deems practical, a limited examination of the return to discover omissions and errors of computation, and shall determine the amount of the overpayment, if any, for the taxable period to which the return relates and refund the amount of such overpayment to the person who filed the return."

TECHNICAL OVERVIEW—THE COMPREHENSIVE TAX RESTRUCTURING AND SIMPLIFICATION ACT OF 1994

INTRODUCTION TO THE TECHNICAL EXPLANATION OF THE COMPHRENSIVE TAX RESTRUCTURING AND SIMPLIFICATION ACT OF 1994

The Comprehensive Tax Restructuring and Simplification Act of 1994 eliminates over $400 billion of business and individual income taxes and payroll taxes. To replace this revenue, the package enacts a Business Activities Tax (BAT). The BAT is a tax on all businesses that sell goods or services in the U.S. economy. The tax is designed to be simple to compute and to administer, and it allows a company to use the sales and purchase data that it already keeps for its own financial reporting purposes. Generally, a company will determine its gross receipts from the sale of goods and services and its gross purchases of goods and services that it uses in its business. By subtracting purchases from sales, the company computes the value of its business activity. A single rate of 14.5 percent will be applied to that value to determine the tax due.

The BAT base therefore will equal the sum of the company's payments for the labor services (wages, salaries, fringe benefits, etc.) and the capital services (interest to creditors and profits to owners) that allow the company to convert its purchased inputs into the more valuable outputs that it sells. Moreover, the BAT operates according to the destination principle, that is, the tax applies only to goods and services that are used or consumed in the United States. Under the provisions of GATT, the BAT is a border-adjustable, indirect tax that can be removed from U.S. exports before they enter the stream of world commerce and that can be levied on imports that come into our deomstic market.

The BAT applies to a very broad base of producers of goods and services so that it is as economically neutral as possible. Neutrality is essential so that business decisions are based not on the tax consequences of an action, but on efficiency and productivity concerns. The tax is neutral as well in its treatment of debt and equity financing; by eliminating the deduction for interest, debt-financing is no longer tax-favored.

The BAT applies a single-rate of 14.5 percent and contains virtually no exemptions.

Multiple rates and exemptions significantly increase the complexity of a tax system. For example, a May 1993 IRS study on implementing a federal value-added tax system concluded that the cost and difficulty of administering a tax would be directly dependent on the complexity of the system and urged that "it is imperative to the interests of both taxpayers and the government that [such] legislation be kept as simple as possible."

Finally, it is important to note that the legislation assumes that the BAT is fully phased in. The drafters have not attempted to address the difficult transition questions that such extensive reform necessarily entails. The intention behind the Comprehensive Tax Restructuring and Simplification Act of 1994 is to detail the changes in the current tax system that are required to encourage savings and investment, increase productivity and efficiency, and renew our ability to compete internationally. Only after we have reached a consensus as to the goal of tax reform, and the appropriate means to achieve such goal, should we resolve the issues raised by the transition to such a system. In other words, we have to know where we are going, before we know the best way to get there.

TECHNICAL EXPLANATION OF THE COMPREHENSIVE TAX RESTRUCTURING AND SIMPLIFICATION ACT OF 1994

Title I.—Repeal of the corporate income tax

In general

The bill generally would repeal the corporate income tax.[1] Unincorporated businesses would be allowed to elect to be treated as a corporation. The bill would provide a corporate-level passive investment tax to discourage the avoidance of the individual income tax by amassing passive investments in corporate form. In addition, in order to provide simplification, the bill would change the income tax treatment of distributions from corporations.

Election to be treated as a corporation

Under the bill, the earnings of both incorporated and unincorporated businesses would be subject to both the Business Activities Tax ("BAT", described in detail below) and the individual income tax. All businesses would be subject to BAT as they engage in taxable business activities. However, the timing of the imposition of the individual income tax may vary depending on the form of entity. As under present law, in the absence of the election described below, the earnings of a business other than a C corporation would be subject to the individual income tax as its taxable income is earned, while the earnings of a C corporation would not be subject to the individual income tax until such earnings are distributed.

So that the changes made by the bill do not distort an individual's choice as to the form of entity through which to conduct a trade or business, the bill provides an election for a business that is not a C corporation to be treated as a domestic C corporation. Under the election, each owner of an equity interest in the business would be treated as a shareholder of a corporation in proportion to such interest. The Secretary of the Treasury would provide regulations for the application of the appropriate subchapter C rules to distributions, liquidations, organizations, and reorganizations of electing unincorporated businesses. The election to be treated as a corporation (and as shareholders of a corporation) would not apply for purposes of determining the treatment of employee fringe benefits.[2]

The election to be treated as a corporation would be made in the manner prescribed by the Secretary of the Treasury and would remain in effect until revoked. Elections and revocations would be required to be made within two and a half months after the close of the taxable year for which they would apply. If a business revokes its election to be treated as a corporation, it must receive the consent of the Secretary of the Treasury in order to once again make the election.

Passive investment tax

Operation of the passive investment tax

The bill would impose a tax (the "passive investment tax") on a C corporation for a taxable year if the corporation has nonbusiness gross income in excess of a threshold amount for the year.[3] The amount of the passive investment tax would be determined by multiplying the nonbusiness gross income of the corporation by the highest individual income tax rate for the taxable year.[4] A taxpayer would not be allowed to offset its passive investment tax liability with any of the various tax credits allowed under the income tax (other than the credit for the overpayment of tax).

For this purpose, "nonbusiness gross income" would mean the gross income of the corporation other than gross income from a business activity (determined in the same as under the BAT).[5] Thus, nonbusiness gross income generally would be that gross income that is not subject to the BAT (as well as gross income that is not subject to the BAT because it relates to an export sale or certain nontaxable transactions) and generally would be dividends, interest, capital gains and other income from the corporation's passive investments.[6] Nonbusiness gross income for the taxable year would be reduced by the aggregate amount of any distributions by the corporation to its shareholders with respect to its stock that are made: (1) during the taxable year and (2) during the first 45 days after close of the taxable year, so long as the distributions are designated by the corporation as relating to the prior taxable year. Any distribution described in (2) would: (1) not be treated by the corporation as again reducing nonbusiness gross income in the year of the actual distribution and (2) be treated as received by the recipient shareholder for the shareholder's taxable year that includes the last day of the taxable year of the distributing corporation.

A corporation would exceed the threshold amount for a taxable year if the percentage determined by dividing the corporation's nonbusiness gross income by its gross income exceeds the applicable working capital percentage. The "applicable working capital percentage" would be a percentage determined by the Secretary of the Treasury that, based on the best information available, represents the ratio that the: (1) average nonbusiness gross income of corporations that is derived from assets held to provide reasonably required working capital bears to (2) average gross income. The Secretary may prescribe more than one applicable working capital percentage to reflect differences in industries, size, or other factors that affect reasonably required working capital. It is expected that a corporation that conducts more than one trade or business would be allowed to compute and apply its applicable working capital percentage on a business segment or blended basis. In addition, the Secretary may prescribe aggregation rules that provide for the treatment of two or more persons as one person to the extent necessary to carry out the purposes of the passive investment tax.[7]

The passive investment tax would not apply to start-up companies or companies changing their businesses under certain circumstances.[8] Specifically, the passive investment tax would not apply to a corporation for the first taxable year it has gross income if: (1) no predecessor of the corporation was subject to the tax; (2) it is established to the satisfaction of the Secretary of the Treasury that the corporation will not be subject to the tax for the first two years following its first taxable year; and (3) the corporation, in fact, is not subject to the tax for such two years. In addition, the passive investment tax would not apply to a corporation for any taxable year if: (1) neither the corporation nor its predecessor was subject to the tax in a prior year; (2) it is established to the satisfaction of the Secretary of the Treasury that substantially all the nonbusiness gross income of the corporation for the year is attributable to proceeds from the disposition of one or more active trades or businesses and that the corporation will not be subject to the tax for the first two years following the taxable year; and (3) the corporation, in fact, is not subject to the tax for such two years.[9]

Amounts subject to the passive investment tax would be subject to the individual income tax when distributed to individual shareholders. Accordingly, the bill would not establish a "previously taxed income" account or a shareholder credit mechanism to reflect the fact the distributed income had been subject to the passive investment tax.

Rationale for the passive investment tax

Because the bill would repeal the corporate income tax but retain the individual income tax, individuals would have an incentive to avoid or defer a portion of their income tax liability by placing passive investments in corporate form or by having corporations reinvest (rather than distribute) business earnings in passive investments. The passive investment tax is intended to address these situations by applying an individual income tax-based tax (the "passive investment tax") upon corporate passive earnings when such earnings are in amounts in excess of the reasonable business needs of the corporation. The bill directs the Secretary of the Treasury to develop appropriate working capital ratios in order to determine when a corporation has amassed too many passive investments. Although the development of these ratios may be difficult and may be criticized as not applicable to any particular case, it is believed that this "working capital approach" is superior to similar approaches contained in the present-law income tax.[10] For example, the accumulated earnings tax applies a tax based on the individual income tax on corporate earnings and profits that are accumulated beyond the reasonable needs of the business, unless the taxpayer proves that such accumulation was not done for tax avoidance purposes. Thus, the accumulated earnings tax generally is applied on a case-by-case basis; such application creates administrative complexity. Conversely, the passive foreign investment company (PFIC) rules apply mechanical tests to determine when a corporation has excessive passive investments in order to remove the benefits of deferral of U.S. tax on income earned through certain foreign corporations. The PFIC rules apply if: (1) 75 percent or more of the gross income of the foreign corporation is passive income or (2) 50 percent or more of the average value of the corporation's assets produce, or are held to produce, passive income.[11] The bill tries to strike a balance between a tax that is administered on a case-

by-case basis and one that provides a "one size fits all" approach. We invite comments on the need to develop, and the ability to administer, a corporate-level tax on excessive passive investment.

Treatment of corporate distributions

The bill changes the treatment of distributions with respect to corporate stock. In general, all distributions made by a corporation to a shareholder with respect to its stock would be treated as ordinary income by the shareholder. This general rule would not apply to any distribution: (1) that is pursuant to a plan of full or partial liquidation of the corporation; (2) that is in complete redemption of all a shareholder's stock in the corporation; (3) that does not constitute a dividend because of insufficient corporate earnings and profits, in the case of a corporation that maintains an adequate account of its earnings and profits; or (4) that represents a return of capital to the extent the distribution does not exceed the shareholder's contributions to capital during the 60-day period ending with the date of the distribution. These exceptions do not apply to the special post-yearend distribution that a corporation designates as being made in its prior year.

These changes to the treatment of distributions with respect to corporate stock are intended to provide simplification. For a corporation, the bill replaces the corporate income tax with the BAT. The corporate income tax and the BAT have as their bases different measures of economic activity[12] and many of the records that a corporation must maintain under the income tax may become unnecessary under the BAT. One such recordkeeping requirement relates to "earnings and profits."[13] Thus, the bill generally repeals the present-law earnings and profits requirement.[14] A corporation could electively retain the present-law earnings and profits requirement by maintaining the records necessary to determine its earnings and profits. It is expected that the Secretary of the Treasury would provide guidance so that a corporation may determine when it has met its burden for maintaining the required earnings and profits records.

The bill would also repeal the "not essentially equivalent to a dividend" and disproportional distribution exceptions of sections 302(b)(1) and (2) of present law. Although the replacement of the corporate income tax with the BAT does not implicate these exceptions, the repeal of these rules will provide simplification because it: (1) eliminates what under present law are difficult determinations and (2) allows the treatment of corporate distributions to be determined and reported at the corporate, rather than the individual shareholder, level (other than with respect to distributions that are in complete redemption of the shareholder's interest in the corporation).

Despite the desire to achieve simplification and uniformity with respect to corporate distributions, it may be considered unfair to apply "per se" dividend treatment in certain cases. Thus, the bill does not treat all corporate distributions with respect to stock as dividends. Distributions received in full or partial liquidation of a corporation[15] and distributions that result in the full redemption of the shareholder's interest in the corporation would continue to be treated as under present law.[16] In addition, a distribution to a shareholder within a reasonable time of the shareholder's contribution of capital to the corporation would be treated as a non-taxable return of such capital.

Further, the bill is not intended to change present law as to whether or when distributions are taxable. Thus, for example, proportionate stock distributions would continue to be excluded from gross income (sec. 305(a)), while certain redemption premiums would continue to be taken into account on an accrual basis (sec. 305(c)).

Technical and conforming amendments

The bill would require the Secretary of the Treasury to submit to Congress such technical and conforming changes as are necessary to implement the amendment made by this title of the bill. The submission would be due no later than six months after the date of enactment of the bill and would include legislation implementing these changes. Examples of technical and conforming changes could include repeal of subchapter S of the Code and those provisions of the alternative minimum tax that apply to corporations. Other income tax rules that currently apply to both corporations and individuals (e.g., the Modified Accelerated Cost Recovery System of sec. 168 of the Code) generally would be retained since the bill would not repeal the individual income tax.

Title II.—Tax Relief for Individuals

Reduction in OASID payroll tax rate

The bill would reduce the payroll tax rate for both employers and employees for Old-Age, Survivors and Disability Insurance from 6.2 percent to 3.1 percent. In the case of self-employed individuals, the corresponding tax rate would be reduced from 12.4 percent to 6.2 percent. Some portion of revenues from the BAT would be transferred to the old-age and survivors insurance and disability insurance trust funds to compensate for the reduction in trust fund revenues caused by the reduction in the payroll tax rates.

Extra standard deduction

The bill would allow an extra standard deduction for individuals who do not itemize their deductions. The extra standard deduction would be $8,650 for married individuals filing joint returns, $7,600 for heads of household, $5,200 for single individuals, and $4,325 for married individuals filing separate returns. This extra standard deduction would be allowed in addition to the basic standard deduction and the additional standard deduction for the aged and the blind. For a taxpayer claiming both the basic standard deduction and the extra standard deduction, the total standard deduction at 1994 levels would be $15,000 for married individuals filing joint returns, $13,200 for heads of household, $9,000 for single individuals, and $7,500 for married individuals filing separate returns.

The extra standard deduction would be phased out ratably for taxpayers with adjusted gross income (AGI) in the following ranges: $45,000–$88,250 for married individuals filing joint returns, $37,000–$75,000 for heads of household, $27,000–$53,000 for single individuals, and $22,500–$44,125 for married individuals filing separate returns.

The amount of the extra standard deduction and the phaseout ranges are expressed in 1994 dollars and would be indexed for inflation.

Business activities tax credit

In general

The bill would allow individuals a refundable credit against the income tax equal to the rate of the BAT times the individual's AGI (up to certain limits). The maximum amount of AGI eligible for the credit would be $9,500 for married individuals filing joint returns, $7,900 for heads of household, $5,700 for single individuals, and $4,750 for married individuals filing separate returns. With a BAT rate of 14.5 percent, the maximum credit would be $1,378 for married individuals filing joint returns, $1,146 for heads of household, $827 for single individuals, and $689 for married individuals filing separate returns.

The credit would be phased out at a 20 percent rate for taxpayers with "modified AGI" in excess of the following amounts: $15,000 for married individuals filing joint returns, $13,200 for heads of household, $9,000 for single individuals, and $7,500 for married individuals filing separate returns. With a BAT rate of 14.5 percent, the credit would be phased out ratably for taxpayers with "modified AGI" in the following ranges: $15,000–$21,888 for married individuals filing joint returns, $13,200–$18,928 for heads of household, $9,000–$13,133 for single individuals, and $7,500–$10,944 for married individuals filing separate returns. Modified AGI would be defined as AGI determined (1) without regard to deductions for individual retirement arrangements (IRAs), simplified employee pension plans (SEPs) or Keogh plans, or to exclusions for foreign income, income from the possessions and educational savings bonds, and (2) by adding in tax-exempt interest and the portion of Social Security benefits not otherwise included in AGI.

The AGI limits and the beginnings of the phaseout ranges are expressed in 1994 dollars and would be indexed for inflation.

Advance payment

An individual would be eligible to receive the business activities tax credit on an advanced basis similar to that available for the earned income tax credit. An individual would be required to provide a BAT eligibility certificate to his or her employer that (1) certifies he or she is eligible for the BAT credit, (2) certifies that he or she does not have a BAT eligibility certificate in effect for that year with another employer, (3) states whether the individual's spouse has a BAT eligibility certificate in effect, (4) estimates the individual's AGI and modified AGI.

Title III.—Business Activities Tax

In general; definitions of key terms

In the case of any person engaged in business activities, the bill imposes a tax (the "Business Activities Tax," or "BAT") equal to 14.5 percent of the taxable amount for the taxable period. The "taxable amount" generally is the amount by which the taxpayer's gross receipts from business activities exceed the taxpayer's business purchases for the taxable period. If the taxpayer's business purchases exceed its gross receipts for the taxable period, the taxpayer generally would be entitled to a refund equal to 14.5 percent of the excess.

"Business activity"

"Business activity" means' (1) the sale of property or services in the United States by any person in connection with a business;[17] (2) the import of property or services into the United States (whether or not in connection with a business); and (3) the export of property or services from the United States in connection with a business.[18] "Business activity" would also include the provision of financial intermediation services.[19] "Business" includes any activity carried on continuously or regularly, whether or not for profit, that involves or is intended to involve the sale of property or services. The "sale of property" means the transfer of ownership of property from a seller to a purchaser for consideration.[20] The "sale of services" means the performance of any service, including the granting of the right to use tangible or intangible property for consideration and the

granting of a right to the performance of services or to reimbursements (including the granting of warranties, insurance, and similar items) for consideration. The following are not "business activities": (1) the performance of services by an employee for an employer and (2) any import of an article that is free of duty under chapter 98 of the Harmonized Tariff Schedule of the United States.

"Taxable amount"

The "taxable amount" is the amount by which the taxpayer's gross receipts from business activities exceed the taxpayer's business purchases for the taxable period. In the case of imported property or services, the "taxable amount" is the sum of: (1) the amount paid or incurred for the property or services, plus (2) any amounts paid or incurred for the transportation of imported property (if such costs are not included in the amount paid for the property).

"Gross receipts"

"Gross receipts" means all receipts from a business activity. The amount treated as gross receipts from the exchange of property or services is the fair market value of the property or services, plus any money, received. Gross receipts includes: (1) any excise tax, sales tax, customs duty, or other separately stated levy imposed by the Federal, a State, or a local government on property or services sold in a business activity and received and collected by the seller in connection with the sale, other than Federal excise taxes imposed by chapters 31, 32, 33, 34, 35, 36, 39, 51, 52, or 53 of the Internal Revenue Code of 1986; and (2) the proceeds of property and casualty insurance for losses in connection with business property or services.

If a taxpayer issues a post-sale price adjustment attributable to a sale, the gross receipts from which were taken into account in a prior taxable period, then the amount of the adjustment would be treated as a reduction in gross receipts for the taxable period in which the adjustment is issued.[21] For this purpose, "post-sale price adjustment" means a refund, rebate, or other price allowance attributable to a sale of property or services. If the reduction in gross receipts for the period exceeds the amount of gross receipts for the period, such excess would be treated as a business purchase.

"Gross receipts" would not include any gross receipts from an applicable nontaxable transaction except to the extent attributable to money or other property (i.e., "boot") received in the transaction. "Applicable nontaxable transaction" means any transaction: (1) to which sections 332, 351, 368, or 721 applies, or (2) which is specified by the Secretary of the Treasury and with respect to which gain would not be recognized in whole or in part for Federal income tax purposes.[22]

"Business purchases"

"Business purchase" means any amount paid or incurred to purchase property or services for use in a business activity other than: (1) any amount paid or incurred as current or deferred compensation to employees, or employee benefits; (2) interest or insurance premiums (other than premiums for property or casualty insurance); or (3) other implicit financial intermediation fees; and (4) amounts the payment of which is unlawful under Federal, State, or local law. Business purchases include any excise tax, sales tax, customs duty, or other separately stated levy imposed by the Federal, a State, or a local government on property or services purchased for use in a business activity. Under a special rule, business purchases would include certain implicit intermediation services provided by a financial intermediary for which the purchaser receives notice of the amount of these services.[23] The amount treated as paid or incurred for business purchases in connection with the exchange of property or services is the fair market value of the property or services exchanged, plus any money paid.

If a taxpayer receives a post-sale price adjustment attributable to a business purchase that was taken into account in a prior taxable period, then the amount of the adjustment would be treated as a reduction in business purchases for the taxable period in which the adjustment is received. If the reduction in business purchases for the period exceeds the amount of business puchases for the period, such excess would be treated as a gross receipt.

Treatment of imported and exported goods and services and international transportation services

In general

The BAT generally is based on the destination principle. That is, goods and services are subject to tax in the country in which they are used rather in their country of origin. Under the destination principle, imported goods and services are subject to tax while exported goods and services are not. In this way, all locally-consumed goods and services bear the same tax burden, regardless of their origin. Likewise, locally-produced goods and services may be exported free of local tax, but may face tax in the country of destination if such country also operates under the destination principle.

Treatment of imported goods and services

Under the bill "business activity" includes the import of property or services into the United States for use or consumption within the United States, whether or not in connection with a business. The taxable amount with respect to imported property or services is the sum of: (1) the amount paid or incurred for the property or services, plus (2) any amounts paid or incurred for the transportation of imported property (if such costs are not included in the amount paid for the property).[24] Thus, individual (non-business) consumers that import property or services into the United States would be subject to the BAT on such import (unless such property was an article that would be free of duty under chapter 98 of the Harmonized Tariff Schedule of the United States).

Taxpayers that import property or services into the United States for use in a business activity would be allowed to deduct, as a business purchase, the taxable amount described above with respect to the imported property or services, plus the amount of BAT payable with respect to the import of the property or services.[25] A business purchase deduction would not be allowed for a property or service that is imported for use other than in a business activity.

The taxation of imported property and services raises certain administrative concerns. Procedures must be established to ensure that taxpayers report the importation of goods and services as taxable business activities and that the Federal tax authorities can trace such activities. These issues are of less concern with respect to taxpayers that are otherwise subject to the BAT with respect to a trade or business conducted in the United States because such taxpayers: (1) should be familiar with the operation of the tax; (2) would generally file periodic BAT returns subject to review; and (3) would be expected to maintain the documentation that discloses the import activity in order to claim a business purchase deduction for the imported good or service. However, taxpayers that import goods or services but are not otherwise subject to the BAT (i.e., nonbusiness consumers) present deeper concerns. Such taxpayers may not be aware of their BAT responsibilities or may attempt to evade the tax. Taxation of imported property may be enforced by levying the BAT at the place of import through the U.S. Customs Service. Imported services may be more difficult to identify and subject to tax. Other countries that impose consumption-based value-added taxes based on the destination principle have also confronted these issues and have responded in various ways. We invite comments on how to best administer the BAT with respect to goods and services imported by both businesses and consumers.

Treatment of exported goods and services

Under the bill, "business activity" includes the export of property or services from the United States in connection with a business. However, the gross receipts of a taxpayer engaged in an exporting business activity would not include amounts received by the taxpayer for property or services exported from the United States for use or consumption outside the United States.[26] Thus, taxpayers that engage in the export of goods or services generally would receive BAT refunds because such taxpayers would not have taxable gross receipts but would have deductible business purchases with respect to such activity. Under a special rule, if property or services are sold for export to a governmental entity or exempt organization and are exported other than in a business activity of such entity or organization, then the seller of the property or service to the entity or organization would be treated as the exporter.

Under the BAT, taxpayers have an incentive to classify their sales of goods or services as nontaxable exports. As in the case of imports, it may be appropriate to elicit the services of the U.S. Customs Service in the determination of which goods are being exported and by whom. However, the determination of the extent to which services performed by taxable persons within the United States are being used outside the United States presents difficulties of identification and allocation (where the services are used both within and without the United States). We invite comments on to this issue.

Treatment of international transportation services

"Gross receipts" would not include receipts from the transportation of property: (1) exported from the United States or (2) imported into the United States. Transportation related to exported goods are not subject to the BAT for the same reason exported goods are not subject to BAT under the destination principle. The provision of transportation services with respect to imported goods would not be subject to the BAT because such services are considered to be a portion of the taxable amount of the underlying good (i.e., the person importing a good is subject to the BAT with respect to the related transportation cost rather than the person who performs the transportation service).

"Gross receipts" would include receipts from the transportation of passengers from outside the United States to a destination in the United States, but would not include receipts from the transportation of passengers from the United States to a destination outside the United States. "Business purchases"

would include amounts paid or incurred in a business activity for the transportation of passengers from outside the United States to a destination in the United States, but would not include amounts paid or incurred in a business activity for the transportation of passengers from the United States to a destination outside the United States.

"Business purchases" would not include amounts paid or incurred for the transportation of property exported from the United States. "Business purchases" also would not include amounts paid or incurred for the transportation of property imported to the United States unless such receipts are not taken into account in computing the taxable amount with respect to the imported property.[27]

Accounting methods

In computing its taxable amount under the BAT, a taxpayer generally may use the cash receipts and disbursements method, an accrual method, or any other method permitted by the Secretary of the Treasury. All persons that are members of the same controlled group would be required to use the same method of accounting. It is expected that the taxpayer's method of accounting must be consistently applied and may only be changed with the permission of the Secretary.

The BAT departs from several income tax concepts. Principally, under the income tax, the cost of property that has a useful life that extends beyond one year must be capitalized and amortized; under the BAT, such costs are "expensed". Thus, a taxpayer's method of accounting under the BAT primarily will be used to determine in which taxable periods the taxpayer's sales and purchases took place and should be taken into account.

Except as described below, the BAT allows taxpayers a choice of accounting methods so as not to impose potential recordkeeping burdens that the required use of a single, specified method may entail. It is expected that most taxpayers would use a method of accounting for the BAT that corresponds to a method that is used for non-tax purposes, primarily for financial accounting purposes.[28] However, the Secretary of the Treasury will be allowed to change a taxpayer's method of accounting if such method does not clearly reflect the taxpayer's gross receipts or business purchases.[29]

The BAT provides specific accounting method rules in two instances. First, taxpayers may not use the installment method to report gross receipts from the sale of property. Thus, even if a taxpayer that sells property pursuant to an installment plan elects the cash receipts and disbursements method as its overall method of accounting for BAT purposes, the taxpayer will be required to report gross receipts from such sales on an accrual method.

The denial of the use of the installment method and the fact that the BAT generally is not imposed on interest received by a business (unless that business is a financial intermediary, as described below) raises certain concerns. A taxpayer that sells property pursuant to an installment plan should not be able to avoid the BAT by characterizing a significant portion of the installment payments it receives as non-taxable interest. Rules similar to those contained in the present-law income tax system may be necessary to reach this result under the BAT.[30] A similar issue of characterization relates to the fact that interest receipts are treated differently depending on whether the taxpayer's business activity is treated as a financial intermediation service. Sellers of goods on the installment plan may derive a significant portion of their "profit" from the provision of credit to their customers. An issue that arises in these cases is whether these taxpayers should be treated as engaging in two separate business activities—the sale of goods as well as financial intermediation services. Similar questions arise with respect to retailers that issue their own credit cards to consumers.

The BAT also provides special accounting method rules with respect to property produced pursuant to long-term contracts (as defined in section 460(f) of the Code). A seller of property would be required to use the percentage-of-completion method in computing its gross receipts.[31] The purchaser of property produced pursuant to a long-term contract would compute its business purchases with respect to the property by using the cash receipts and disbursements method of accounting (i.e., the business would be allowed deductions as it makes payments pursuant to the contract).

The nature of long-term contracts requires the special rules described above. The cash method does not properly reflect the amount of "value added" by the producing seller in any accounting period. Allowing producers to report gross receipts under the cash method could allow for a significant deferral of BAT when payments under the contract are back-end loaded. Theoretically, purchasers under long-term contracts should be allowed business purchase deductions as value is added to the property produced under the contract. However, synchronizing the accrual treatment of buyers and sellers under long-term contracts would require the sharing of the seller's cost information with the buyer. Thus, the BAT would prescribe the use of an accrual method by the seller and the cash method by the buyer.

Treatment of financial services

In general

The bill would impose the BAT on the provision of financial intermediation services. Special rules would apply to determine the taxable amount derived from financial intermediation services. In addition, the bill would permit the business user of financial intermediation services to deduct as business purchases any stated fees for such services and any implicit fees allocated and reported to it by the financial intermediary. This would prevent the cascading of BAT when financial intermediation services are used in connection with a business.[32] The bill would provide a method (and reporting mechanism) for allocating the value of financial intermediation services among users of the services.

The need for a special regime

Like other services, financial intermediation services add value to the economy. Unlike other services where the price is often clearly specified, however, the value of financial intermediation services is not easily determined. Typically, the charge for financial intermediation services is blended with other elements of the transaction. For example, financial institutions provide financial intermediation services by pooling the funds provided by depositors[33] and making them available to borrowers. These institutions often do not charge explicit fees to the depositors and borrowers; rather, the institutions are compensated for the financial intermediation services by the spread between the interest rates charged on loans and the interest rates paid to depositors. For other financial services, financial institutions may charge separate fees, but such fees do not necessarily represent the actual value of the particular services rendered. For example, banks often offer low or no cost checking services to customers who maintain a minimum balance in their checking accounts.

Similarly, a life insurance provider generally charges no explicit fee for its services. Instead, the provider receives premiums, generally only a small part of which comprises a fee to the provider.[34] Investment returns on the premiums also may cover a portion of the cost to policyholders of the insurance service (as evidenced by a lower rate of return being credited to policyholders and the remaining return on investment going to the insurance provider).[35] Thus, the value of the financial intermediation services that should be subject to tax is the "spread" between the premiums and financial earnings of the provider and the claims and cash surrender values paid by the provider.

These difficulties in ascertaining the actual cost to consumers of financial intermediation services have led most countries that impose a consumption-based value added tax to exempt financial intermediation services.[36] Recently, for two principal reasons, this exemption has been widely criticized by both commentators and the providers of financial services.

First, for reasons of economic efficiency and equity, commentators argue that financial services should be included in the base of any consumption-based value added tax and should be taxed at the rate that generally applies to ordinary goods and services.[37] This treatment would maintain economic neutrality and prevent the tax system from favoring or disfavoring financial services over other goods and services. If one type of service is subject to tax, but another is not, the tax system distorts the relative values of the services to consumers, which, in turn, distorts the consumers' choices.

Second, exemption may be disadvantageous to taxpayers where financial intermediation services are provided to business customers. Under the value added tax systems in other countries, exempting financial services from tax means that financial institutions are not considered taxpayers, and consequently may not claim any refunds of the tax they may have paid on business purchases. Business customers of exempt financial institutions, in turn, are not allowed to treat as a business purchase any amounts paid to the exempt financial institution. This generally results in cascading (multiple imposition) of tax with respect to the business purchases of the provider.[38]

Thus, to maintain neutrality and avoid distorting the behavior of consumers and to minimize any cascading of tax, we believe that the value of financial intermediation services should be included in the BAT base and that business customers generally should be entitled to a business purchase deduction for the cost of such services.

Definition of financial intermediation services

Under the bill, a business activity generally includes the sale of property or services in connection with a business. Financial institutions provide numerous services to customers, including: (1) intermediation between borrowers and lenders; (2) risk-pooling; (3) pooling of savings, which provides economies of scale; (4) transactional services, such as credit cards and checking; and (5) market-making. Many of these services, however, would not be treated as a sale of property or services under the bill. For example, the term "property" generally would

be defined in the bill to exclude money and financial instruments,[39] and therefore, market-making through buying and selling financial instruments would not be a business activity under the general BAT rules. Thus, absent special rules, financial intermediaries often would not be treated as engaged in a business activity, and no BAT would be imposed on the services they provide.

To ensure that financial intermediation services are subject to the BAT, the bill specifically treats the provision of financial intermediation services as a business activity. For this purpose, financial intermediation services would be defined to include lending services, insurance services, market-making and dealer services, and certain other services.

The bill would define "lending services" as the regular making of loans and providing credit to, or taking deposits from, customers. For example, a financial institution generally would provide lending services. In addition, a consumer finance company, credit card issuer, or other provider of credit would be treated as rendering lending services, even if the business did not also accept deposits. Installment or delayed credit arrangements, however, would not be treated as lending services under the bill if no interest was charged in connection with the arrangements, other than fees or additional charges for late payments.[40] Thus, a business would not be treated as providing lending services merely because it allowed customers to pay for goods on a layaway plan, or to defer payments for goods to a future date, provided the business did not charge interest to customers utilizing such a layaway or deferred payment plan.

The bill does not define "insurance services." We would expect that a person providing common forms of insurance services, such as risk shifting and risk distribution services, and reinsurance, would be treated as providing insurance services under the bill.

"Market-making and dealer services" would be defined under the bill to mean services performed by a person who regularly, in the ordinary course of its trade or business, either (1) purchases financial instruments from customers or sells financial instruments to customers, or (2) offers to enter into, assume, offset, assign, or otherwise terminate positions in financial instruments.[41] For example, an underwriter who buys securities from an issuer at a discount and sells the securities to its customers would be treated as providing dealer services. By contrast, a securities broker who acts only as a conduit between buyers and sellers, or as the buyers' or sellers' agent, might not qualify as rendering market-maker or dealer services.[42]

Under the bill, "financial intermediation services" also would include services rendered by a person that acts as an intermediary in the transfer of property, services, or financial assets, liabilities, risks or instruments among two or more persons, or in the pooling of economic risks among other persons, and that derives gross receipts from streams of income or expense, discounts or other financial flows associated with the matter with respect to which such person is acting as an intermediary. For example, a person engaged in factoring receivables might not meet the definition of providing lending services under the bill, but generally would be considered to be rendering financial intermediation services under this definition.

Finally, we would expect that the Secretary of the Treasury will furnish guidance on other business activities that constitute financial intermediation services.

Determination of taxable amount

Under the general BAT rules, the taxable amount for business activities would be gross receipts less business purchases. Many of the items necessary to determine the value of financial intermediation services, however, are expressly excluded from the general definitions of gross receipts and business purchases under the bill. For example, the bill would define gross receipts to exclude receipts of interest, income from financial instruments, and proceeds from the disposition of financial instruments. Similarly, monetary outflows associated with financial transactions such as payments of principal and interest, payments under option, forward and futures contracts and notional principal contracts, and payments to purchase financial instruments generally would not constitute business purchases. The bill would therefore apply special rules to determine the taxable amount for financial intermediaries.

The bill provides that "financial receipts" would replace "gross receipts" in the calculation of the taxable amount for providers of financial intermediation services. Under the bill, "financial receipts" would be defined as all receipts properly allocable to the financial intermediation services activity, other than contributions of capital. Thus, "financial receipts" would include all amounts that qualify as gross receipts under the general provisions of the bill, such as stated fees and proceeds from the sale of property used in the business. Moreover, financial receipts would include virtually all other inflows of value that would not be treated as gross receipts by other types of businesses. For example, a financial intermediary would treat the receipt of proceeds from borrowings made in connection with its business as a financial receipt.[43] Amounts received by a financial intermediary from the sale of stock or securities in connection with its business also would be included in financial receipts. Financial receipts would not, however, include any funds a financial intermediary received from the sale of its own equity, or funds or property otherwise contributed to its own capital.

Similarly, for purposes of the BAT, the bill provides that "adjusted business purchases" would replace "business purchases" with respect to the providers of financial intermediation services. Under the bill, "adjusted business purchases" would include all expenditures that qualify as business purchases under the general BAT rules, such as the cost of office supplies, equipment and machinery, travel expenses, and the cost of real property used in the business. In addition, certain financial outflows that are not deductible by other businesses would be "adjusted business purchases". These would include: (1) payments of principal and interest on borrowings associated with the financial intermediation services business;[44] (2) the cost of financial instruments, and any payments made under financial instruments, other than the cost of, or payments made under, instruments that represent equity interests in the person engaged in the financial intermediation services business; (3) claims and cash surrender values paid in connection with insurance or reinsurance services; and (4) payments for reinsurance.

For example, a typical bank would include in its financial receipts the stated fees it charges customers for services during a period, such as safety deposit box fees, all deposits received from its customers during the period, all receipts of interest and principal from borrowers, any dividends and other financial flows such as receipts from swaps, options and foreign currency contracts, and the proceeds from dispositions of such assets as stocks, bonds and other evidences of indebtedness, or from assumptions or assignments of notional principal contracts and other financial contracts. To obtain its taxable amount, a bank would deduct its adjusted business purchases, including business purchases deductible under the general BAT rules, as well as most payments of interest and principal, costs of acquired financial instruments such as stocks, bonds and other evidences of indebtedness, and payments made under financial instruments, which would include upfront payments it might make under notional principal contracts or the amounts it might pay to assign such a contract.

An insurance company would calculate its taxable amount in a similar fashion. The insurance company would, in addition, include in its financial receipts the insurance premiums it receives from customers, and would deduct as an adjusted business purchase net insurance claims, payments of cash surrender values, and payments for reinsurance.[45]

A person that provides financial intermediation services and engages in other businesses would be required to determine which part of its monetary inflows and outflows are allocable to its financial intermediation services business. Monetary inflows and outflows not associated with the financial intermediation services would be subject to the general BAT rules. Any item, such as a borrowing, a loan or other financial instrument, must be consistently treated. Thus, a person could not deduct as an adjusted business purchase the payment of principal and interest on a loan unless the person previously included the amount it borrowed under the loan in financial receipts. Similarly, if a business deducted the purchase of a share of stock as an adjusted business purchase, the business would have to include the proceeds of the sale of the stock in financial receipts.

We would expect that the Secretary of the Treasury will furnish guidance on the determination of financial receipts and adjusted business purchases.

Business purchases of financial intermediation services

To avoid cascading of the tax,[46] the bill would permit business users of financial intermediation services to claim appropriate business purchase deductions for the cost of such services. Stated fees charged by financial intermediaries would be deductible under the general BAT rules. Where the cost of the service is not stated (and therefore typically cannot be determined by the customer), the bill would require financial intermediaries to determine the implicit fee for the service and to allocate and report the implicit fee to the users of the services. A business purchase deduction would generally be allowed for any implicit fees allocated and reported to a person by a financial intermediary that are related to the person's business use of such services.[47] No deduction would be permitted with respect to implicit fees that are not reported.

Allocation and reporting of implicit fees

The bill would require each financial intermediary to allocate the amount of the implicit fees it derives from financial intermediation services among the recipients of the services. The allocable implicit fees of a financial intermediation services business

should equal the aggregate amount charged by the intermediary for financial intermediation services, other than the services provided for a stated fee and property and casualty insurance services.[48] Thus, it is anticipated that a financial intermediary's allocable implicit fees generally would constitute (1) its financial receipts, less (2) amounts that would be treated as gross receipts under the general BAT rules, such as any stated fees and property and casualty insurance premiums, less (3) the excess of its adjusted business purchases over the amounts that would be treated as business purchases under the general BAT rules.[49]

The bill would require businesses to allocate implicit fees from financial intermediation services among recipients of the services for each taxable period. The allocation would have to be made on a reasonably consistent basis. It is anticipated that financial intermediaries would allocate their implicit fees based on a number of factors. These factors could include the interest paid or received by a customer, the amount insured or the insurance premium payment under a customer's policy, the labor expended by the financial intermediary in connection with a transaction, and other relevant considerations. It would generally not be reasonable for a financial intermediary to allocate a disproportionate amount of its implicit fees to business recipients of services. For example, if a business customer and a household customer engaged in substantially similar transactions with a bank, it would generally be unreasonable for the bank to allocate a larger amount of its implicit fees to the business customer than to the household customer.

We would expect the Secretary of the Treasury to issue regulations regarding the requirements for reasonably allocating implicit fees among the recipients of financial intermediation services. These regulations could provide general rules for allocating fees for different types of financial intermediaries or specific rules for certain financial intermediaries.

The bill requires financial intermediaries to report to each recipient of services the amount of the implicit fees allocated to the recipient for the taxable period. The report must be provided within 45 days after the close of the taxable period to which the report relates. The bill provides that the Secretary of the Treasury should establish rules allowing a financial intermediary not to report to persons receiving the services other than in connection with a business activity. A business purchase deduction for an implicit fee, to the extent allowable, shall be taken by the recipient of services in the taxable period in which the notice from the financial intermediary is received.

Treatment of nonprofit entities

The BAT would provide the following rules for governments, charities, and other nonprofit entities:

Governments

Government entities (Federal, State, and local) would be fully subject to BAT only with respect to the following activities: (1) Public utility services; (2) mass transit services; (3) postal services; and (4) any activity not involving an "essential governmental function" within the meaning of present-law section 115.[50] Other government activities would not be subject to tax, with the exception of certain "self-consumption" activities made subject to BAT by regulation (as described below). The amount of government revenues subject to BAT would be computed by subtracting from gross receipts derived from taxable activities by amounts incurred by governments to purchase goods or services used in such activities. The Secretary would have authority to prescribe by regulation methods for allocating government purchases of goods or services between taxable and nontaxable activities.

If a government entity did not separately charge customers for the taxable service (e.g., if utility services were not separately charged but were included with property taxes), then gross receipts subject to BAT would be determined on the basis of the fair market value of the taxable service.

Government entities would be partially subject to the BAT with respect to their "self-consumption" of goods or services, to the extent so provided by regulations in order to discourage vertical integration by governments in a manner that distorts competition.[51] If so provided by regulation, "self-consumption" goods or services—meaning certain goods or services produced and consumed by the government itself as part of offering a final, nontaxable good or service—would be subject to the BAT. In such cases, the taxable amount would be calculated by subtracting from the fair market value of the self-consumed goods or services the cost of inputs with respect to such self-consumed goods or services.

Government entities would be limited with respect to the refunds they may claim, because any loss from a taxable activity would be reduced by: (1) the value of property or services used in the activity for which no amount was paid or incurred by the consumer and (2) amounts appropriated to the taxable activity from general government revenues.

Charities

Charities described in present-law section 501(c)(3) would be fully subject to the BAT only with respect to their business activities that would be subject to the unrelated business income tax ("UBIT") under present law. The taxable amount for a charity conducting a "UBIT activity" would be determined in the same manner as the taxable amount for any other person subject to the BAT.

Charities (like governments) would be partially subject to BAT with respect to their self-consumption of goods and services, to the extent so provided by regulations, based on the fair market value of the self-consumed goods or services. In contrast to the BAT rules for government entities, no special rule would be provided to limit refunds in cases where charities offer subsidized taxable services.

Other nonprofit entities

Nonprofit entities (other than charities) would be fully subject to the BAT on their transfers of property or furnishing of services. Thus, a nonprofit that is not a charity generally would be subject to BAT on all its activities, even if such activities are substantially related to what historically has been considered to be the exempt purposes of the organization.

If there were no separately stated charge by the nonprofit entity when it transfers property, or furnishes services, to others (e.g., goods or services furnished by a social welfare organization), then gross receipts would be determined on the basis of fair market value of the property transferred or services furnished. In contrast to the BAT rules governing government entities, no limit would be imposed on refunds in cases where noncharities offer subsidized goods or services.

Because the activities of nonprofit entities that are not charities (e.g., social welfare organizations) are taxable but not subject to a special refund rule (as are certain enumerated government activities), activities of nonprofits will be eligible for BAT refunds (assuming that contributions to the nonprofit are not treated as "gross receipts" from the sale of property or services). This could result in favorable tax treatment for activities conducted by social welfare organizations or other nonprofit entities compared to the tax treatment of the same (or similar) activities conducted by charities, which generally are not subject to BAT or eligible for BAT refunds. Thus, it may be desirable to extend the special refund limitation applicable to government taxable activities to taxable activities of all nonprofit entities.

Small business exemption

The bill would provide an exemption from the BAT for certain small businesses. The exemption would apply for any taxable period if the person's aggregate gross receipts for the taxable period[52] and the three preceding taxable periods did not exceed $100,000. The exemption would not apply if the person (or a predecessor of the person) was not exempt for all preceding taxable periods.[53] An otherwise exempt person may elect to be subject to the BAT.[54]

Administration of the BAT[55]

The person engaging in a business activity (i.e., the selling of goods or services in the United States, importing of property or services to the United States or exporting of property or services from the United States) would be liable for the BAT (or eligible for a refund).[56] The liable person would be required to file a tax return before the sixteenth day of the second calendar month after the close of each taxable period. "Taxable period" means a calendar quarter, except that if a taxpayer has a taxable year other than a calendar year, then "taxable period" means a calendar quarter of such year. In addition, to the extent provided in regulations, "taxable period" includes a period selected by a person other than a calendar quarter. The Secretary of the Treasury would have the authority to shorten the length of a person's taxable period to the extent the Secretary deems such action necessary to protect the revenue.

Refunds of BAT (e.g., a refund may be due because a taxpayer has business purchases for the taxable period in excess of gross receipts for the period) would be made by the Secretary of the Treasury within 45 days of the taxpayer filing a return requesting the refund. The 45-day period would allow the Secretary an opportunity to make a limited examination of the return to discover omissions and errors of computations, determine the amount of the refund (if any) for the period to which the refund relates, and refund the amount to the person who filed the return.

Other special rules—Related parties

Except to the extent provided in regulations: (1) an affiliated group of corporations (as defined in present-law section 1504(a) without regard to paragraphs (2), (4), and (7) of section 1504(b)) or (2) two or more businesses (whether or not incorporated) under common control within the meaning of present-law section 52(b) and the regulations thereunder), would be treated as one person. In addition, a controlled group of corporations (as defined in present-law section 1563(a), but determined without regard to the second sentence of section 1563(a)(4) and section 1563(e)(3)(C)) may elect to be treated as one person.

Transactions in the United States between corporations or other businesses treated as one person shall not be taken into account in computing the gross receipts or business purchases of either corporation or business.

Certain transactions between related parties

Any transfer of property or services to a related person would be treated as a sale of the property or services for an amount equal to the fair market value of the property or service. For this purpose, "related person" means: (1) in the case of an employment relationship, an employer and employee; (2) in the case of an entity, an owner of the entity; (3) any other person specified in regulations; and (4) any member of a family (as defined in sec. 267(c)(4)) of an individual described in (1), (2), or (3) above. "Owner" means a proprietor of a sole proprietorship or any other holder of a beneficial interest in a corporation, partnership, trust, or other entity. Thus, if a corporation transfers property in lieu of cash compensation to an employee, the transaction would be treated as a sale of the property, subject to the BAT, for its fair market value and a payment of the sales proceeds to the employee as nondeductible compensation. Similar rules would apply to sales of property to employees at a discount. As a further example, if an owner of a business uses business property for personal use, such use would be treated as a sale of the property subject to the BAT (or a sale of the right to use the property if the use is for a temporary period) at its fair market value and a distribution of the proceeds to the owner.

Similarly, if a person ceases to engage in any business activity, any business property or services of the person would be deemed to have been sold at their fair market value in a business activity immediately before the cessation. However, except as provided in regulation, such rule would not apply to the extent the property or service is transferred to another person as part of the transfer of going concern. For example, if a business owner liquidates his business and uses the distributed business property as personal use property, the liquidation would be treated as a taxable sale under the BAT. However, if the business owner uses the property in a different business, the liquidation generally would not be a taxable transaction under the BAT.

Other conversions of property or services

Any conversion of a property or service from use in a business activity to use in any other activity (or from use in any other activity to use in a business activity) shall be treated as a sale (or acquisition) of the property or service for its fair market value. For example, the paragraphs above describe the treatment that results when a business owner converts business property to personal use (i.e., the transaction would be treated as taxable sale of property at its fair market value). Conversely, if a business owner contributes what is personal property in her hands to her business for use in a business activity, the receipt of the property would be treated as a business purchase by the business in an amount equal to the fair market value of the property.

The bill does not preclude a business from holding nonbusiness property.[57] Thus, property can be converted from business use to nonbusiness use (or vice versa) within a business. The bill provides that in these cases, the conversion would be treated as a taxable sale (if the property leaves business use) or as a business purchase (if the property enters business use).

Treatment of transfers in satisfaction of debt and bad debts

The transfer of business property or services by a debtor to a creditor in exchange for a reduction of debt generally would be treated as a sale of the property or services in a business activity for an amount equal to the amount by which the debt is reduced. The transfer of personal property in satisfaction of a business debt would be treated as a contribution of such property to the business immediately prior to the transfer in satisfaction. The transfer of business property in satisfaction of a personal debt of a business owner would be treated as a distribution of such property to the owner immediately prior to the transfer in satisfaction. The transfer of personal use property in satisfaction of a personal debt should have no BAT consequences to the transferor.

If an amount owed to a seller of business property or services that was taken into account as gross receipts in a prior period becomes wholly or partially uncollectible during a subsequent period, then the seller would treat the uncollectible amount as a reduction in gross receipts in the subsequent period. In such cases, the seller would be required to notify the purchaser of the amount the seller is treating as uncollectible. The notice must set forth with specificity the purchase or purchases to which the write-off relates and must be sent to the purchaser at the purchaser's last known address within 10 days after the close of the period in which the write-off occurs. If a purchaser receives a notice from a seller with respect to a write-off of an amount owed for business property or services that the purchaser treated as a business purchase in a prior period, then the purchaser must treat such amount as a reduction in business purchases for the taxable period in which the notice is received.

If a seller receives payment for a bad debt amount that was treated as a reduction in gross receipts in a prior taxable period, then the seller must treat the recovery as a gross receipt in the period in which it is received. Similarly, if a purchaser pays all or part of an amount treated as a bad debt reduction in business purchases in a prior taxable period, then such payment would be treated as a business purchase for the taxable period in which the payment is made.

These rules would not apply if a debt becomes worthless in the taxable period that the underlying sale took place (or if a recovery occurs in the taxable period a debt is written off). In these cases, the gross receipts from the sale is written off). In these cases, the gross receipts from the sale and the bad debt deduction (or the bad debt deduction and the recovery) would be netted against each other in determining the taxable amount for the period.

Treatment of gambling

In determining the taxable amount with respect to legal gambling, lotteries, and other games of chance, gross receipts would include (but are not limited to) amounts received from wagers and ticket purchasers and business purchases would include amounts paid to winners.

Regulations

The Secretary of the Treasury would be authorized to prescribe such regulations as may be necessary to carry out the provisions of the BAT.

FOOTNOTES

[1]The bill would repeal all chapter 1 taxes on corporations, other than the tax on income of foreign corporations not connected with United States business (sec. 881) and the branch profits tax (sec. 884).

[2]Under present law, sole proprietors, partners, and certain shareholders of subchapter S corporations generally are not treated as employees for purposes of determining the treatment of certain fringe benefits provided to them.

[3]The tax would not be imposed on any foreign corporation unless the corporation is exempt from the branch profits tax of section 884.

[4]Even though the bill would repeal the corporate income tax, corporations would be required to maintain a taxable year for purposes of the passive investment tax. It is expected that such year generally would be the year the corporation had, or would have, maintained for income tax purposes.

[5]Gross income for the taxable year would be reduced by returns and allowances made during the year and bad debt deductions for the year. In addition, in determining gross income and nonbusiness gross income, a corporation that directly or indirectly holds an interest in passive foreign investment company will be deemed to have made an election described in sec. 1295(b).

[6]As described in detail below, pursuant to a special rule, certain dividends, interest, and capital gains of financial intermediaries generally would be subject to the BAT and thus would not be considered to be nonbusiness gross income subject to the passive investment tax. This treatment is appropriate because the assets that give rise to these types of income (i.e., stocks, bonds, loans, etc.) are trade or business assets in the hands of a financial intermediary, even though such assets would be considered to be passive investments in the hands of a non-financial service business, such as a manufacturer. However, it is possible that a financial intermediary may amass an unreasonably excessive amount of such assets. In such case, it would be appropriate to subject the financial intermediary to the passive investment tax.

[7]Among the issues involved in treating two or more persons as one taxpayer for purposes of the passive investment tax include the treatment of foreign subsidiaries. The passive investment tax is intended to discourage corporations from amassing passive investments in order to avoid or defer the imposition of the individual income tax on earnings from such assets. The foreign personal holding company rules (sec. 551, et seq.), the subpart F income rules (sec. 951, et. seq.) and the passive foreign investment company rules, (sec. 1291 et seq.) of present law address similar concerns with respect to passive income earned by foreign corporations the stock of which is owned by U.S. persons. However, the operation of these present-law income tax rules may differ from the operation of the passive investment tax (e.g., the thresholds for determining when the various rules apply may differ). We invite comments as to the appropriate treatment of foreign earnings under the passive investment tax, the appropriate measurement of the threshold amount in the case of a controlled group of corporations that includes foreign subsidiaries, and the possible coordination between the passive investment tax and the present-law anti-deferral regimes with respect to foreign earnings.

[8]These exceptions are similar to those applicable to passive foreign investment companies under present law (sec. 1297(b)(2) and (3)).

[9]In general, it is unclear how the gain on the sale of stock of a controlled member of the group should be treated under the bill. All transactions of a corporation generally should be subject to the BAT or potentially to the passive investment tax. One could argue that the gain should not be subject to the BAT because a stock sale normally would not be considered to be a business activity. Alternatively, one could argue that the ownership of the stock of a controlled subsidiary is not a passive investment that the passive investment tax is designed to discourage. Creating further difficulty for the resolution of the resolution of the issue is the fact that if the group had sold the assets rather than the stock of the target member, the resulting gain would be subject to the BAT and the acquiring group would be allowed a matching business purchase dedication under the BAT. However, such deduction may be claimed only if the acquirer is itself subject to the BAT. If the acquirers are individuals, as may be the case with respect to stock sales, the BAT deduction may not be allowable.

The bill partially addresses this issue by providing that a corporation generally will not be subject to the passive investment tax if it sells a trade or business and does not reinvest the sales proceeds in passive investments that would subsequently subject the corporation to the passive investment tax. However, this solution does not resolve all the issues

raised in the paragraph above and we invite comments on how dispositions of trades or businesses (either through asset sales, stock sales, or reorganizations that do not give rise to recognition under subchapter C of present law) should be treated under the proposed framework of an interacting BAT, passive investment tax, and individual income tax.

[10] Under the present-law income tax, these concerns are addressed by the accumulated earnings tax (sec. 531), the personal holding company tax (sec. 541), the foreign personal holding company rules (sec. 551, et seq.), and the passive foreign investment company rules (sec. 1291, et. seq.).

[11] In the case of a foreign corporation that is a "controlled foreign corporation," and any other foreign corporation that so elects, assets for this purposes are measured by adjusted basis.

[12] One of the principal differences between the corporate income tax and the BAT is that the latter does not require the capitalization of costs that benefit future periods.

[13] Under the present-law corporate income tax, distributions with respect to corporate stock are treated as dividends only to the extent the distributions are from the corporation's earnings and profits. In general, the earnings and profits of a corporation is its taxable income, adjusted for certain items in order to more accurately reflect the economic income of the corporation.

[14] It should be noted that some commentators have suggested the repeal of the earnings and profits requirement even in the context of the corporate income tax. See, Senate Committee on Finance. *Report on the Reform and Simplification of the Income Taxation of Corporations*, 77–78 (Comm. Print 1983); the Earnings and Profits Work Group of the American Bar Association Section on Taxation, *Elimination of "Earnings and Profits" from the Internal Revenue Code*, 39 Tax Lawyer 2, 285 (1986); William D. Andrews, *"Out of its Earnings and Profits": Some Reflections on the Taxation of Dividends*, 69 Harvard Law Review 1403 (1956); and Walter J. Blum, *The Earnings and Profits Limitation on Dividend Income: A Reappraisal*, 53 Taxes 2, 68 (1975).

[15] We recognize that the determination of what constitutes a partial liquidation often is difficult.

[16] Theoretically, liquidating distributions and distributions in full redemption of a shareholder's interest in a corporation could be treated as part dividend (to the extent of the shareholder's pro rata share of corporate earnings and profits) and part sale or exchange (to the extent of it excess of earnings and profits). However, adoption of such a regime would: (1) complicate the treatment of corporate distributions and (2) treat liquidations and redemptions differently than sales of stock.

[17] For purposes of determining where a sale occurs, a sale of property would be treated as occurring in the United States if the property is located in the United States at the time of the sale. A sale of services would be treated as occurring in the United States to the extent the services are: (1) provided from a place of business in the United States; (2) provided with respect to property in the United States; or (3) incidental to the provision of services within the United States.

For purposes of the BAT, "United States," when used in a geographic sense, includes the customs territory of the United States (as defined in General Headnote 2 of the Harmonized Tariff Schedules of the United States) and any area seaward of the States lying within the outer boundaries of the outer continental shelf (as defined in sec. 1331 of title 43, U.S. Code).

[18] See the discussion below for a more detailed description of the treatment of imports and exports.

[19] See the discussion below for the special rules that apply with respect to financial intermediation services.

[20] For purposes of the BAT, the exchange of property for property or services would be treated as a sale of property and the exchange of services for property or services would be treated as a sale of services. If there is an incidental sale of services in connection with the sale of property (e.g., the provision of transportation or installation services in connection with the sale of major appliance), such sale of services would be treated as a sale of the property. Likewise, if there is an incidental sale of property in connection with the sale of services (e.g., the sale of a de minimis amount of parts in connection with a major repair of property), such sale of property would be treated as a sale of services.

[21] Post-sale price adjustments that are made by a taxpayer in the same taxable period as the original sale occurred would be netted against the gross receipts from the sale.

[22] In general, it is thought that transactions in which the mere form of the business changes (or if business property is transferred from one business to another in a transaction other than a sale) should not be subject to the BAT. In all cases, "boot" received in a nontaxable transaction should be includible in gross receipts (unless received other than in connection with a business activity). The bill specifically describes some of these transactions (i.e., those transactions described in secs. 332, 351, 368, or 721 of present law). Other transactions that meet this test may include: (1) certain transfers of possession of, or security interest in, property or services by a debtor to a creditor or a representative of creditors; (2) any transfer of possession of, or incidents of ownership, of property or services to a fiduciary who represents the interests of an owner; or (3) any transfer of ownership of property or services by a debtor to a trustee in a bankruptcy, receiver, or other fiduciary appointed to marshall, manage, or liquidate a debtor's property for the benefit of creditors. However, any service provided by a transferee in such cases would be subject to BAT. We seek comments as to what other transactions should be included as nontaxable exchanges under the BAT.

[23] Special rules apply to implicit financial intermediation fees as described in detail below.

[24] In addition, a special rule applies to any imported property that is returned to the United States after export; (1) for repairs or alterations abroad or (2) to undergo assembly, processing, manufacture or other changes in condition abroad. In such cases, the taxable amount with respect to the property would be the net cost to the importer of such repairs, alterations, assembly, processing, manufacture or other changes in condition. This special rule would only apply to property that the importer acquired before export and as to which there has been no transfer of ownership between the time of export and import.

[25] A business purchase deduction with respect to BAT levied on imported property would be allowed to equalize the treatment of property produced domestically and internationally. For example, assume a manufacturer has the choice of acquiring a machine produced in the United States or produced abroad. Further assume for purposes of the example that: (1) the price of either machine is $1,000 before tax and (2) U.S. providers of goods and services will increase their sales prices to reflect the BAT imposed on their business activities. Under these assumptions if the manufacturer acquires the machine from the U.S. producer, it could be expected to pay $1,145 (the $1,000 pre-tax price for the machine, plus $145 of BAT borne by the U.S. producer and assumed to be passed-through to the buyer) and would be able to claim a business purchase deduction of $1,145. If the manufacturer acquires the machine from the foreign producer, it would pay $1,145 ($1,000 to the producer and $145 to BAT to the Federal Government) and thus should be allowed to claim a business purchase deduction of $1,145.

[26] Therefore, "gross receipts" generally would not include: (1) receipts from the sale of rental property located outside the United States; (2) fees from the use of patents, trademarks, copyrights, know-how, or licenses to the extent such rights are used or consumed outside the United States; and (3) royalties or other similar fees received with respect to sales of goods or services used or consumed outside the United States. As described herein, however, the determination of use or consumption outside the United States with respect to these or similar activities may be difficult.

[27] The in-bound transportation services should be taken into account as taxable imports under the destination principle. This can be accomplished by either: (1) including transportation costs as a portion of the taxable amount with respect to imported property or (2) separately taxing transportation as an imported service. The bill selects the former option with respect to imported property that itself is subject to the BAT. However, certain property transported into the United States may not be considered to be imported property under the bill. For example, international postal or other carrier services may involve the transfer of mail or other items into the United States that are not considered to be imported property. These services should be subject to the BAT, but may be difficult to identify. Similar issues arise with respect to the international transfer of information (i.e., through telephone lines, via satellite or otherwise).

[28] Most businesses use an accrual method of accounting for financial accounting purposes. However, under generally accepted accounting principles, even an accrual method business must provide a statement of cash flows that essentially utilizes the cash receipts and disbursements method of accounting. See, Statement of Financial Accounting Standards No. 95.

[29] Under present law, a taxpayer generally must compute its taxable income pursuant to the method of accounting that the taxpayer regularly uses in keeping its books. Permissible methods of accounting include the cash receipts and disbursements method, an accrual method, any other permitted method, or any combination of methods permitted under regulations by the Secretary of the Treasury. In addition, the Secretary may change a taxpayer's method of accounting if that method does not clearly reflect the taxpayer's income. The "clear reflection of income" standard has been used to change what otherwise would be a permissible method of accounting (sec. 446).

A "clear reflection of income" standard is inapplicable to the BAT, which does not attempt to measure income, by allowing the "expensing" of capital goods when acquired, the taxable base of the BAT more closely resembles the net cash flow of a firm than does an income tax (with adjustments for items such as imports and exports and interest and compensation expense). The BAT does not mandate the use of the cash receipts and disbursements method because of a desire to allow a business to utilize a method of accounting that generally corresponds to a method that it utilizes for nontax purposes. However, use of an accrual method may result in significant BAT deferral when payment of a liability satisfying the "all events" test is significantly delayed. (For example, see *Ford Motor Co. v. Comm.*, 91 T.C. No. 6, (1/31/94); and *Mooney Aircraft v. Comm.*, 420 F.2d 400 (5th Cir. 1969); where income tax deductions were denied for deferred payments despite the fact that the underlying liability may have satisfied the "all events" test.) The present-law income tax addresses this issue, in part, through the "economic performance" rules of section 461(h). The BAT would not adopt such rules, but rather would provide the Secretary of the Treasury the authority to adjust a taxpayer's method of accounting in the appropriate circumstances. The drafters invite comments on how to best address this issue.

[30] See section 483 and sections 1271 through 1275 of the Code. However, these provisions were enacted because of a concern that taxpayers were understating the interest component of payments made pursuant to installment plans. As described above, under the BAT, the concern would be that taxpayers may overstate the interest component.

[31] For this purpose, the percentage of completion generally would be determined pursuant to rules similar to those provided in present-law section 460(b). However, because the income tax rules require the capitalization of certain costs, adjustments for adaptation to the BAT may be necessary. For example, percentage of completion for BAT purposes could be determined by using percentages that (1) are developed for financial accounting purposes; (2) only take into account direct production costs; or (3) are developed using the BAT treatment of the contract expenditures, with an adjustment for labor costs.

[32] See footnote 38 and accompanying text.

[33] The bank provides a depositor with the services of intermediation (i.e., reinvesting the deposit in a loan to a different customer) and risk pooling (e.g., assuring that the deposit can be withdrawn even if borrowers from the bank default).

[34] The remaining premium amount generally would cover the actuarial risk of payment under the policy, including any investment element.

[35] An insurance company may provide other financial services for which a portion of policy premiums and investment returns constitutes compensation. For example, an insurance company may furnish intermediation services similar to a financial institution because it pools the premiums it receives and makes these funds available to others through investments or loans.

[36] It should be noted that most countries that impose a value added tax utilize the credit invoice method. Under the credit invoice method, tax is imposed on a transactional basis, with the amount of tax disclosed on an invoice. Taxable businesses may reduce the amount of tax on their sales by the amount of tax imposed on their business purchases.

[37] See, e.g., Alan Schenk and Oliver Oldman, "Analysis of Tax Treatment of Financial Services Under a Consumption-Style VAT: A Report of the

American Bar Association Section of Taxation committee on Value Added Tax," 44 Tax Lawyer 181 (1991).

[38] Generally, the provider will attempt to pass the cost of taxes paid on its purchases to customers (possibly harming its competitive position with respect to potential customers who might alternatively self-finance or might purchase other goods or services). In such a case, the failure to allow the customer a deduction for the cost (including the taxes passed thru by the provider) will result in cascading of the tax. Alternatively, the provider could decide to bear the cost of the tax itself, thereby depressing its profits.

[39] Financial instruments would be defined under the bill as: (1) corporate stock; (2) ownership interests in certain partnerships and trusts; (3) notes, bonds, debentures and other evidences of indebtedness; (4) interest rate, currency and equity notional principal contracts; (5) evidence of an interest in, or a derivative financial instrument in, any financial instrument described in (1)–(4) above, or any currency, such as options, forward contracts, short positions or similar interests in such a financial instrument or currency; and (6) any other instrument that is not otherwise defined as a financial instrument, but that is an identified hedge of any of the foregoing categories of financial instruments.

[40] This exception would not apply if the seller of property adjusts the price of the property according to the deferred payment arrangement with the buyer, or otherwise charges the buyer interest disguised in the price of the property.

[41] This is substantially the same as the definition of a dealer in securities contained in present law sec. 475(c)(1).

[42] Similarly, such a broker would not qualify as providing financial intermediation services under the definition in the following paragraph because a broker's commission charged to a buyer or seller of securities generally would not qualify as a associated with the securities for which it acted as a broker. Such a person, however, would be subject to the general BAT rules regarding the sale of services.

[43] Financial receipts would not include amounts borrowed allocable to employee compensation, employee benefits, or to purchases of goods and services that would be business purchases under the general BAT rules. For a similar rule with respect to deductions of "adjusted business purchases", see footnote 44.

[44] No deduction would be allowed with respect to principal or interest payments allocable either to employee compensation, employee benefits, or business purchases as determined under the general BAT rules. For example, a bank borrows money to purchase a building used in its business. The bank would be entitled to a business purchase deduction for the cost of the building, but would not take into account the borrowing, and any payments of principal and interest, in determining its financial receipts and adjusted business purchases. See footnote 43 regarding treatment of borrowings as financial receipts.

[45] Because an insurance provider, like other financial intermediaries, may deduct (as an adjusted business purchase) the cost of its investments allocable to the financial intermediation business, it is believed that a deduction for reserves would be largely duplicative and therefore unnecessary. We invite comments regarding this issue.

[46] See footnote 38 and accompanying text.

[47] A person would not be able to deduct an implicit financial intermediation fee reported to it which has otherwise been taken into account under the bill. Thus, a financial intermediary who borrows money and deducts the interest cannot deduct any implicit financial intermediation fee reported to it relating to the interest.

[48] Property and casualty insurance is excluded because business purchasers are entitled to deduct premiums for such insurance under the general BAT rules.

[49] The rule in (3) is necessary to prevent cascading of the tax.

[50] In general, these activities are subject to the BAT primarily because: (1) these governmental activities are similar to services provided by non-governmental persons who normally would be subject to the BAT and (2) governments often charge fair market value fees for the provision of such services.

[51] As an example of the self-consumption of goods or services, assume a local government normally would provide refuse collection for its citizens by contracting with an outside trash collector and the government is not subject to the BAT with respect to the provision of such service. Further assume that the trash collector is subject to the BAT and increases the price it charges the government in order to recoup all or a portion of its BAT liability. As a result, the government may decide to hire its own employees to provide the refuse collection rather than continue to contract with the outside firm. The hiring of the additional employees is an example of "self-consumed" services.

[52] As described in detail in the section below, a "taxable period" means a calendar quarter. The $100,000 exemption amount would be adjusted to the extent a person's taxable period is not calendar quarter or if the person is not engaged in business for an entire taxable period.

[53] The "once-big-always-big" rule may be viewed as being overly harsh. However, the primary purpose of the small business exemption is to relieve small businesses of recordkeeping requirements. Once a person or business has developed the requisite BAT reporting procedures, maintaining the same or similar procedures and records after a change in the size of the person's business activity should not prove to be an overwhelming burden.

[54] A small business with business purchases in excess of gross receipts (e.g., a start-up business) may wish to forego its exemption in order to claim a BAT credit for such excess. Once the election is made, that person would no longer be able to claim a future BAT exemption.

[55] The bill provides a minimum set of rules regarding the administration of the BAT. More explicit rules would be developed once the more substantive issues regarding the BAT are resolved. Among the rules to be developed would include those regarding requests for extensions to file returns, interest on overpayments and underpayments of BAT, penalties, notices of deficiency, statutes of limitations, judicial procedures, liens, etc.

For a general discussion of administrative costs associated with a consumption-based tax, see General Accounting Office, *Value-Added Taxes: Administrative Costs Vary With Complexity and Number of Businesses*, Report to the Joint Committee on Taxation, GAO-GGD-93-78, May 1993.

[56] Rules would be required to determine who is the liable person in the case of related parties treated as one person (as described below). Similar rules would be required for the passive investment tax described in title I of the bill.

[57] For example, a business can invest in stocks, bonds, or other passive investments. Such property generally would be viewed as investment property not subject to the BAT, unless the business involved the provision of financial services. However, business may hold certain other types of property (e.g., undeveloped land, collectibles such as artwork, durable commodities such as gold, etc.) that could be viewed as investment property not subject to the BAT or as business property subject to the BAT. In many cases, property is acquired for a specifically intended purposes and the appropriate treatment of property may be determined by the nature of the trade or business acquiring or holding the property. For example, gold bullion acquired by a jeweller generally would be considered to be business property subject to the BAT, while gold acquired by an accounting firm generally would be considered to be an investment. Undeveloped land may require more difficult determinations. For example, an individual may acquire a parcel of land to use as his or her own personal hunting reserve, but may later decide to convert the land to investment or business use by merely holding, rezoning, subdividing, or developing it.

Other types of property may be held for both business and nonbusiness use at the same time. For example, a landlord may live in his own apartment complex. These situations involve allocations between the business and nonbusiness use rather than determining the nature of the use or the conversion from one use to another.

The situations presented above raise issues of tax administration and tax avoidance. For example, a taxpayer may be able to generate BAT business purchase deductions by transferring investment or personal use property to his controlled business and claiming the property to be business property. The inability to identify conversions to personal use (e.g., the use of the company car by a business owner) also raises concerns (as it does under the present-law income tax). We invite comments as to the appropriate treatment of property where the intended use of the property is not clear, where property may be easily converted, and where property is of mixed use.●

● Mr. BOREN. Mr. President, I am pleased today to join with my good friend and colleague, Mr. DANFORTH, in introducing the Comprehensive Tax Restructuring and Simplification Act of 1994. This tax package, which includes the business activities tax as a replacement for the corporate income tax, part of the payroll tax, and some individual income taxes, is the result of over 2 years of study and work. I hope that we have made a contribution to the effort to transform our tax system that can serve as a basis for broad reform in the next few years.

I have long been troubled that our tax system discourages savings and investment, impedes productivity and efficiency, and retards our ability to compete internationally. As chairman of the Subcommittee on Taxation, I have held hearings in which we explored the economic consequences of our current income tax regime and searched for new and less destructive ways to raise the revenue required to keep our Government functioning.

Frankly, I was shocked at much of the information I learned during these hearings. Our country compares very unfavorably to other Western economies with respect to savings, investment, and the cost of capital. Our national savings rate is a paltry 2.5 percent of GDP, the lowest rate of any OECD country. For three decades, our investment rate has been substantially lower than those of other countries. During that time, the average investment rate in Japan was two times greater than the United States rate, while Germany's has been two-thirds greater.

A University of Maryland study presented to the subcommittee indicated that the cost of capital in our country is much higher than the cost of capital in other countries—partly as a result of our system of taxation. A U.S. company paying the alternative minimum tax will recover only 34 percent of its investment in the first 5 years. Over the same period of time, a German company recovers 87 percent of its investment; a Japanese company recovers 64 percent; and a Korean company recovers an astonishing 95 percent.

If our companies are going to compete successfully with businesses that face significantly lower capital costs, they will have no choice but to reduce other expenses. This may well mean lower wages for our workers and a reduced standard of living for all Americans. It is no surprise that real wages have recently declined in comparison to historic trends. For example, from 1947 to 1973, the real incomes of Americans doubled every 28 years. After 1973, the growth rate has slowed so much that it would take 17,000 years for them to double again.

Our current income tax system harms our companies' ability to compete globally in another way. Under

GATT rules, direct taxes, like corporate income taxes and payroll taxes, cannot be adjusted at the border. In other words, they cannot be imposed on imports, nor can they be removed from our exports before they enter the world market. Indirect taxes, like the European VAT, are border-adjustable, however. Thus, countries that rely on value-added taxes can place an additional cost on U.S. goods entering their countries. Not only do our goods carry the burden of U.S. corporate and payroll taxes, but they are also subject to the indirect taxes of other countries.

The GATT rules may well be one reason that over 80 countries impose value-added taxes. Yet we continue to make our tax policy in a vacuum, either unaware of or uninterested in the tax practices of the countries against whom we must compete. We continue to believe that we live in the post-World War II world where U.S. firms dominate world commerce and investment, and competition between multinationals was rare. Modern reality is a global market with many strong trading partners. In that context, a comparative analysis is demanded.

Convinced that the current tax system is unquestionably broken, Senator DANFORTH and I proceeded to consult with tax experts, economists, and others to find a solution. We heard the same advice repeated over and over again: We must seriously consider replacing current taxes with a border-adjustment tax. It is advice that many policy makers have been hearing. For example, members of the administration have suggested that we must carefully consider this kind of tax reform in the near future. Most recently, Laura D'Andrea Tyson stated that belief, but it is a refrain we have heard from Leon Panetta, Alice Rivlin, Lawrence Summers, and even the President himself. Many of my colleagues, most notably Senators NUNN and DOMENICI, have been actively studying the issues surrounding the consumption tax and working on their own proposals.

In the hope that we can contribute to what I believe is the inevitable adoption of a new kind of tax system to replace part or all of the current tax system, we introduce today the Comprehensive Tax Restructuring and Simplification Act of 1994. We hope that this legislation will serve as the basis for further discussion of this important topic and will be on the agenda of hearings that we will hold in the next few months in the Subcommittee on Taxation in the Senate Committee on Finance.

At the outset, let me emphasize that we are not proposing additional new taxes. Indeed, I could not support the adoption of a business activities tax as an add-on to the current, seriously flawed tax system that we have now. This proposal is revenue-neutral. For every dollar that the business activities tax raises, a dollar of current tax is replaced. We raise exactly the same amount of money—we do it more efficiently and with less harm to our businesses' ability to compete and produce.

The tax reform package repeals numerous existing taxes. First, we repeal the corporate income tax in its entirety. In addition, partnerships, sole proprietorships, and subchapter S corporations will not pay tax currently on income retained in their businesses for investment and expansion. This sweeping reform of business taxes results in an enormous amount of simplification. For example, businesses no longer must worry about complicated depreciation or amortization schedules, complex calculations under the alternative minimum tax, or the arcane rules surrounding foreign tax provisions.

We also cut the Social Security portion of the payroll tax in half, reducing both the employer and employee contribution. We do not affect the Social Security trust fund because an appropriate amount of revenue raised by the new business activities tax will be credited to the trust fund. This reduction in payroll taxes should be of great help to small businesses and labor-intensive companies that bear the brunt of the payroll tax burden. In addition, the payroll tax, which falls heavily on lower- and middle-income working Americans is quite regressive, so a reduction in this tax reduces the burden on these citizens by over $160 billion.

With respect to the individual income tax system, our tax reform package triples the standard deduction for lower- and middle-income individuals. This provision will remove 15 to 20 million Americans from the tax rolls entirely. Again, this change reduces the tax burden on middle-income Americans and makes the tax system much simpler.

Implementing these tax changes eliminates over $400 billion of current income and payroll taxes. To make up this revenue shortfall, we have proposed a business activities tax. The business activities tax [BAT] is computed simply by subtracting the gross cost of property and services used by a business—business purchases—from the company's gross receipts derived from its sales of goods and services. The resulting amount represents the company's total business activity and is subject to a flat rate of 14.5 percent.

This tax is imposed on virtually all business activity in the United States. We define "business activity" simply: It is "any activity carried on continuously or regularly, whether or not for profit, that involves or is intended to involve the sale of property or services." Thus, the tax would not apply to the family garage sale or the sale of one's residence. It does apply broadly, however, to property and services produced in any business activity.

We intend the BAT to be a very simple tax. The system allows a company to use its most basic financial data—gross sales and purchases—when computing the tax. The BAT is a single-rate tax with virtually no exemptions. Every study of current indirect tax systems concludes that a complex system increases audit costs by 30 to 50 percent and substantially increases compliance costs. Most countries have adopted multiple rates and exemptions of certain goods in an attempt to ameliorate the regressive effects of a value-added tax. We have ensured that the business activities tax does not unduly burden the poor by allowing them a quarterly BAT refund.

In another provision that simplifies the system, the legislation exempts small businesses—with annual gross receipts less than $100,000—from the BAT. This reduces the number of taxpayers from 24 to 9 million, cuts administrative costs by an additional 33 percent, and has very little impact on revenue.

The business activities tax is a border-adjustable indirect tax for purposes of GATT and can therefore be removed from U.S. exports of goods and services. In addition, it can be levied at the border on imported goods and services, allowing our domestic goods to compete on a level playing field with imports in the U.S. market.

Mr. President, I am pleased that I have been involved in this effort to construct real and important tax reform. The package that we propose today allows us to consider the transformation of the current tax system in a more concrete and specific way. We have not found all the answers, but our proposal indicates the right direction for meaningful change. Ultimately, we must replace the current counterproductive tax system with a Tax Code that doesn't hamper our competitiveness both here and abroad.●

By Mr. RIEGLE (for himself, Mr. FEINGOLD, and Mr. PRYOR):

S. 2161. A bill to amend title XVI of the Social Security Act to improve work incentives for people with disabilities; to the Committee on Finance.

SOCIAL SECURITY DISABILITY AMENDMENTS ACT OF 1994

Mr. RIEGLE. Mr. President, I rise today with my colleagues Senator FEINGOLD and Senator PRYOR to introduce the Social Security Disability Amendments Act of 1994. This legislation makes a number of technical improvements to the Supplemental Security Income Disability program to ensure that disabled individuals can have a full and independent life.

Congress has recognized that many disabled Americans need special assistance to obtain adequate housing, education, transportation, and health insurance. The Supplemental Security Income [SSI] Program has made great

progress in securing the basic necessities of life for people with disabilities. However, despite the positive goals of this important program, many beneficiaries have found the rules and administration of the SSI disability program to be very limiting. These regulatory and administrative hurdles often impede the ability of disabled people to become truly independent. One of the best examples of this type of barrier concerns the issue of marriage.

Current SSI rules effectively prevent many disabled Americans from getting married. Because the asset restrictions for the SSI program are so severe, many beneficiaries realize that if they marry, the assets of their future spouse, no matter how modest, will make them ineligible for SSI disability benefits. For the disabled, the health insurance provided by the SSI program is essential for them to live and function at full capacity.

The bill I and my colleagues introduce today will allow disabled people participating in the 1619(b) Work Incentive Program to marry without fear of losing SSI benefits. The assets of the ineligible spouse would not be used in calculating the eligibility of the disabled individual. This change in SSI rules will allow disabled beneficiaries the same simple dignity of getting married that most Americans enjoy.

This legislation also allows disabled SSI beneficiaries to save money for improvements in their housing situation, without losing their SSI benefits due to excess assets. Housing improvements could include moving furniture and personal possessions into more accessible housing, converting space in a family member's home into an independent living unit, acquiring the initial security deposit and other costs related to a person moving into a new apartment or house, acquiring the down payment on an individual's own home or condominium, or achieving any of these goals with another person.

The bill also will change SSI rules so that grant, scholarship, and fellowship income will be treated as earned income for the purpose of calculating SSI eligibility, and will also allow disabled students enrolled in U.S. educational institutions the option to study overseas without losing SSI eligibility.

Mr. President, these modest changes to the SSI program mean greater housing, education, and personal freedom for many disabled Americans. I encourage my colleagues in the Senate to join me in supporting this legislation which will help make independent living a reality for people with disabilities.

Mr. President, I ask unanimous consent that a section-by-section analysis with the full text of S. 2161 be printed in the RECORD.

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

S. 2161

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 Social Security Disability Amendments Act of 1994".

(b) TABLE OF CONTENTS.—The table of contents is as follows:

Sec. 1. Short title; table of contents.
Sec. 2. Disregard deemed income and resources of ineligible spouse when determining continued eligibility under section 1619(b).
Sec. 3. Plans for achieving self-support not disapproved within 60 days to be deemed approved.
Sec. 4. Expansion of plans for achieving self-support to include housing goals.
Sec. 5. Regulations regarding completion of plans for achieving self-support.
Sec. 6. Treatment of certain grant, scholarship, or fellowship income as earned income for SSI purposes.
Sec. 7. SSI eligibility for students temporarily abroad.
Sec. 8. Effective date.

SEC. 2. DISREGARD DEEMED INCOME AND RESOURCES OF INELIGIBLE SPOUSE WHEN DETERMINING CONTINUED ELIGIBILITY UNDER SECTION 1619(B).

Section 1614(f)(1) of the Social Security Act (42 U.S.C. 1382c(f)(1)) is amended by inserting "(other than under section 1619(b))" after "benefits".

SEC. 3. PLANS FOR ACHIEVING SELF-SUPPORT NOT DISAPPROVED WITHIN 60 DAYS TO BE DEEMED APPROVED.

(A) AMENDMENTS TO INCOME EXCLUSION RULES.—Section 1612(b)(4) of the Social Security Act (42 U.S.C. 1382a(b)(4)(A)) is amended in each of subparagraphs (A) and (B) by inserting "and, for purposes of this clause, a completed plan for achieving self-support which is not disapproved by the Secretary within 60 days after the date of submission shall be deemed to be approved by the Secretary until subsequently disapproved by the Secretary (with appropriate notification to the individual)," after "plan,".

(b) AMENDMENT TO RESOURCE EXCLUSION RULE.—Section 1613(a)(4) of such Act (42 U.S.C. 1382b(a)(4) is amended by inserting ", and, for purposes of this paragraph, a completed plan for achieving self-support which is not disapproved by the Secretary within 60 days after the date of submission shall be deemed to be approved by the Secretary until 6 months after subsequently disapproved by the Secretary (with appropriate notification to the individual)" after "such plan".

SEC. 4 EXPANSION OF PLANS FOR ACHIEVING SELF-SUPPORT TO INCLUDE HOUSING GOALS.

(a) INCOME DISREGARD RULES.—Section 1612(b)(4) of the Social Security Act (42 U.S.C. 1382A(B)(4)) is amended in each of subparagraph (A)(iii) and (B)(iv), by inserting ", containing a career or housing goal, that has been" before "approved".

(b) RESOURCE DISREGARD RULES.—Section 1613(a)(4) of such Act (42 U.S.C. 1382b(a)(4)) is amended by inserting ", containing a career or housing goals, that has been" before "approved".

SEC. 5. REGULATIONS REGARDING COMPLETION OF PLANS FOR ACHIEVING SELF-SUPPORT.

Section 1633 of the Social Security Act (42 U.S.C. 1383b) is amended by adding at the end the following:

"(d) The Secretary shall establish by regulation time limits and other criteria—

"(1) which are related to an individual's career or housing goal included in a plan for achieving self-support, and

"(2) that take into account the difficulty of achieving self-support based on the needs of the individual and the goals of the plan.".

SEC. 6. TREATMENT OF CERTAIN GRANT, SCHOLARSHIP, OR FELLOWSHIP INCOME AS EARNED INCOME FOR SSI PURPOSES.

Section 1612(a)(1) of the Social Security Act (42 U.S.C. 1382a(a)(1)), as amended by section 309 of this Act, is amended—

(1) by striking "and" at the end of subparagraph (E); and

(2) by adding at the end the following:

"(G) any grant, scholarship, or fellowship described in section 1617(b)(7) to the extent not excluded from income pursuant to such section; and".

SEC. 7. SSI ELIGIBILITY FOR STUDENTS TEMPORARILY ABROAD.

Section 1611(f) of the Social Security Act (42 U.S.C. 1382(f)) is amended by adding at the end the following: "The first sentence of this subsection shall not apply to any individual who was eligible to receive a benefit under this title for the month immediately preceding the first month during all of which such individual is outside the United States and who demonstrates to the satisfaction of the Secretary that the individual's absence from the United States will be temporary and for the purpose of conducting studies as part of an educational program designed to prepare the individual for gainful employment and sponsored by a school, college, or university in the United States.".

SEC. 8. EFFECTIVE DATE.

Except as otherwise provided in this Act, the amendments made by this Act shall take effect on the 1st day of the 1st calendar month that begins 90 or more days after the date of the enactment of this Act.

SECTION-BY-SECTION ANALYSIS OF SOCIAL SECURITY DISABILITY AMENDMENTS ACT OF 1994

SECTION 1. SHORT TITLE; TABLE OF CONTENTS

SECTION 2. DISREGARD DEEMED INCOME OF INELIGIBLE SPOUSE WHEN DETERMINING CONTINUED MEDICAID ELIGIBILITY UNDER SECTION 1619(B)

Under current law and regulations, if an SSI recipient who is working and benefiting from the Section 1619 work incentives marries, the income deemed from an ineligible spouse may increase their income to the point that they do not meet the requirement in Section 1619(b) that they would be eligible for cash benefits but for earnings. This amendment would disregard the income of the ineligible spouse in determining eligibility under Section 1619(b) for Medicaid.

This amendment is based on the SSI Modernization Panel's recommendations. CBO estimates this provision as an "*"—$500,000 per year or less.

SECTION 3. SELF SUPPORT PLANS NOT DISAPPROVED WITHIN 60 DAYS TO BE DEEMED APPROVED

This provision provides that unless the Social Security Administration acts within 60 days of an individual submitting a Plan for Achieving Self Support to the Social Security Administration that the PASS plan would be deemed to be in effect. It does make it clear that after the deemed approval that the Secretary can subsequently disapprove the PASS prospectively.

This amendment is based on a SSI Modernization Panel's recommendation. CBO estimates this provision as an "*"—$500,000 per year or less.

SECTION 4. REGULATIONS REGARDING COMPLETION OF PLAN FOR SELF-SUPPORT

Under current regulations, a Plan for Achieving Self Support (PASS) can be up to four years in length. This amendment would require that the Secretary would be required to have regulations which would vary according to "the difficulty of achieving self support based on the nature and severity of the disability."

This amendment is based on a SSI Modernization Panel's recommendation. CBO unable to estimate the cost of this provision.

SECTION 5. EXPANSION OF SELF-SUPPORT PLANS TO INCLUDE HOUSING GOALS

Under present SSI law, income of an individual which is identified and earmarked for eventual use under a "Plan for Achieving Self Support" (PASS) by an SSI recipient is not considered to be countable income or resources in determining eligibility for or amount of SSI. The disregards under these "PASS" plans are for such items as education costs related to the persons career goals for employment or special costs for a specially equipped van for transportation to employment related to a person's physical limitations.

This amendment to SSI PASS provisions would provide that a Plan for Achieving Self Support could be either for the purpose of achieving a "career goal or a housing goal." That is, it would add to the current income disregards and disregards for countable resource under the SSI program the disregard of the income received in a month and resources saved which are for the purpose of enabling an individual to achieve a housing goal.

As in the case of PASS plans under current law, a PASS plan which deals with achieving greater independence in housing must be developed by the individual. The plan would also have to be approved by SSA and for such housing plans the goals are to relate to enabling the individual to live as independently as possible.

This provision CBO estimate no cost for this provision.

SECTION 6. TREATMENT OF CERTAIN GRANT, SCHOLARSHIP OR FELLOWSHIP INCOME AS EARNED INCOME

Under present law, SSI excludes from being counted as income any portion of any grant, scholarship or fellowship received for use in paying the cost of tuition and fees at any educational institution. However, such funds received by a person with a severe disability not used for those purposes are treated as unearned income and only the first $20 a month is disregarded.

The amendment would treat such funds not used to pay for tuition and fees as earned income with the earned income disregard of $65 plus one-half the remaining earnings disregarded. The main impact would be to keep such students eligible for Medicaid under the provisions of Section 1619(b).

CBO unable to estimate cost.

SECTION 7. SSI ELIGIBILITY FOR STUDENTS TEMPORARILY ABROAD

Under present law, if an SSI recipient is out of the United States for an entire calendar month they lose their eligibility for SSI benefits. When they return, they must be in the United States for no less than 30 days to again become eligible for SSI benefits. This causes severe problems for a small number of severely disabled individuals who are pursuing their education which includes study in other countries. This amendment would allow the Social Security Administration to waive that requirement when it would cause severe disruption for persons with severe disabilities who are pursuing an education to further their career.

This provision CBO unable to estimate the cost of this provision.

By Mrs. FEINSTEIN (for herself, Mrs. MURRAY, Mr. D'AMATO, and Mr. LIEBERMAN):

S. 2162. A bill to provide protection from sexual predators; to the Committee on the Judiciary.

PROTECTION FROM SEXUAL PREDATORS ACT OF 1994

Mrs. FEINSTEIN. Mr. President, my point in rising this afternoon is to introduce the Protection from Sexual Predators Act of 1994. Similar legislation has been introduced in the House of Representatives by Representative LOUISE SLAUGHTER of New York.

The goal of this legislation is to keep sex offenders behind bars for life.

It is rather innovative legislation because under the bill, State and local law enforcement would be given the option of prosecuting repeat sex offenders under either State or Federal law after the first offense. This key change in the Federal law means that prosecutors will be able to seek the punishment of life imprisonment without parole for violent and dangerous repeat sex offenders.

In the past, Federal law only applied when an incident occurred on Federal land. Under this legislation, Federal prosecution of repeat sex offenders will be possible no matter where the offender's crimes occurred.

Significantly, this legislation says, "Two strikes and you are in." It would mean that if someone is convicted of a first sex offense and then goes on to commit a second aggravated sex offense, the predator could be sentenced to prison for life without parole.

Let me tell you briefly why this legislation is necessary.

The man who kidnaped and murdered 12-year-old Polly Klaas last September, Richard Allen Davis, had an 11-page rap sheet that included a 1976 sexual assault. At the time he dragged Polly at knifepoint from her suburban bedroom, he was on parole after serving just one half of a 16-year sentence for kidnaping.

Another case in California: Melvin Carter, convicted in 1982 on 12 counts of sexual assault, confessed to raping more than 100 women. His release to a prison camp recently in Modoc County caused an uproar from citizens and former victims. Federal authorities moved to shut the camp down by withdrawing its permit to use Forest Service land.

The statistics also are chilling. California alone is estimated to be home to 65,000 sex offenders. Twenty-five percent of all rapists are expected to rape again. There is thus very real reason to provide the option to prosecutors created by this legislation.

It will permit State district attorneys and U.S. attorneys to seek Federal prosecution and life imprisonment of any sex offender who has already been convicted of a State sex offense—one that would have violated Federal law if committed in Federal territory—and who is charged for a second crime that meets the definition now in Federal law of "aggravated sexual abuse."

That broad term includes any crime in which the offender used, or threatened to use, force to compel another person to engage in a sexual act. It also includes engaging in sex with a child under the age of 12, or forcing another person into sex by taking advantage of their mental or physical inability to refuse.

I think that the time for this legislation has come. I send it to the desk, and ask unanimous consent that Senators MURRAY, D'AMATO, and LIEBERMAN be added as original cosponsors of this bill. I am delighted to have them aboard.

I also ask unanimous consent that the legislation be printed in its entirety at this point in the RECORD.

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

S. 2162

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 "Protection from Sexual Predators Act of 1994".

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—Congress finds that.—

(1) rape and sexual assaults continue to be serious threats to the safety of communities across America;

(2) sexual offenders are much more likely than any other category of criminals to repeat their crimes again and again, even after serving time in prison; and

(3) the average rape sentence is just 10½ years, and the average time served is half of that, approximately 5 years.

(b) SENSE OF CONGRESS.—It is the sense of Congress that—

(1) States should more seriously consider the relatively high recidivism rate of sexual offenders when deciding whether to plea bargain with a first-time sexual offender and whether to grant parole to sexual offenders; and

(2) States should review their treatment and parole supervision programs for sexual offenders to assure that these programs are fulfilling their goals, and, if they are not, these programs should be immediately replaced or abandoned.

SEC. 3. FEDERAL JURISDICTION OVER RAPE AND SEXUAL ASSAULT CASES.

Section 2241 of title 18, United States Code, is amended by adding at the end the following:

"(e) PUNISHMENT FOR SEXUAL PREDATORS.—(1) Whoever, in a circumstance described in paragraph (2) of this subsection—

"(A) violates this section; or

"(B) engages in conduct, in or affecting interstate or foreign commerce, that would

be a violation of subsection (a), (b), or (c) of this section, if the offense had occurred in the special maritime and territorial jurisdiction of the United States;

shall be imprisoned for life.

"(2) The circumstance referred to in paragraph (1) of this subsection is that the defendant has previously been convicted of another State or Federal offense for conduct which—

"(A) is an offense (other than an attempt) under this section or section 2242 of this title; or

"(B) would have been an offense under either of such sections if the offense had occurred in the special maritime or territorial jurisdiction of the United States.".

SEC. 4. REGISTRATION PROGRAM.

(a) IN GENERAL.—

(1) STATE GUIDELINES.—

(A) GENERALLY.—The Attorney General shall establish guidelines for State programs requiring—

(i) any person who is convicted of a sex offense to register and keep up to date a current address with a designated State law enforcement agency for 10 years after release from prison, or being placed on parole, supervised release, or probation; and

(ii) each State to provide information obtained about the registered person to the Attorney General on a prompt and regular basis and in a uniform format.

(B) REQUIRED CONTENT OF GUIDELINES.—Such guidelines shall require the inclusion of such data about—

(i) the registered person, including fingerprints and photographs; and

(ii) that person's offenses and modus operandi;

as the Attorney General deems useful for assisting law enforcement investigations by Federal, State, and other law enforcement authorities.

(2) DEFINITION.—For purposes of this subsection, the term "sex offense" means any State or Federal offense that—

(A) is an offense under section 2241 or 2242 of title 18, Unites States Code; or

(B) would have been an offense under either of such sections if the offense had occurred in the special maritime and territorial jurisdiction of the United States.

(b) AVAILABILITY OF INFORMATION.—The Attorney General shall maintain on-line availability of information obtained under this section for use by authorized law enforcement agencies in carrying out their functions. The Attorney General shall by rule provide for the privacy of the information so maintained.

(c) COMPLIANCE.—

(1) COMPLIANCE DATE.—Each State shall have 3 years from the date of the enactment of this Act in which to implement this section.

(2) INELIGIBILITY FOR FUNDS.—The allocation of funds under title I of the Omnibus Crime Control and Safe Streets Act of 1968 received by a State not complying with the guidelines issued under this section 3 years after the date of enactment of this Act may be reduced by 10 percent and the unallocated funds shall be reallocated to the States in compliance with this section.

SEC. 5. STUDY OF PERSISTENT SEXUAL PREDATORS.

The National Institute of Justice, either directly or through grant, shall carry out a study of persistent sexual predators. Not later than one year after the date of the enactment of this Act, such Institute shall report to Congress and the President the results of such study. Such report shall include—

(1) a synthesis of current research in psychology, sociology, law, criminal justice, and other fields regarding persistent sexual offenders, including—

(A) common characteristics of such offenders;

(B) recidivism rates for such offenders;

(C) treatment techniques and their effectiveness;

(D) responses of offenders to treatment and deterrence; and

(E) the possibility of early intervention to prevent people from becoming sexual predators; and

(2) an agenda for future research in this area.

By Mr. SARBANES (for himself and Ms. MIKULSKI):

S. 2163. A bill to recognize the organization known as the 29th Division Associated, Incorporated; to the Committee on the Judiciary.

HONORING THE 29TH INFANTRY DIVISION

• Mr. SARBANES. Mr. President, as we commemorate the 50th anniversary of D-day and the courageous march by the Allied forces to liberate Europe, I wish to reintroduce legislation in honor of the 29th Infantry Division, which played such a major role in the success of the Normandy invasion. The courage and perseverance of the soldiers in the 29th Division of June 6, 1944, in the face of withering German fire were remarkable. The 29th Division has had a close connection with the citizens of Maryland, and it is with great pride that I join Senator MIKULSKI in introducing legislation to grant the 29th Infantry Division Association a Federal charter.

The 29th Division Association is a nonprofit corporation organized under the laws of the State of New Jersey. Its objects and purposes, as expressed in its articles of incorporation, include: 1. The promotion of fellowship among its members. 2. The perpetuation of the record of the 29th Division, U.S. Army, in the World Wars. 3. The promotion of the welfare of its members. 4. The consideration of questions concerning the military policy of the United States. 5. To uphold and defend the Constitution of the United States. The 29th Division Association was organized in 1921 by veterans of World War I who served with the 29th Division in Europe. It now has a membership of 3,500, including veterans from World War I and World War II, as well as young men and women now serving in the 29th Division.

On August 17, 1917, the 29th Infantry Division was organized at Camp McClellan, AL. Comprised of National Guard units of citizen soldiers from Maryland, Delaware, Virginia, the District of Columbia, and New Jersey, the division consisted of two brigades with two infantry regiments, an artillery brigade, and supporting units. The division arrived in France in June 1918 and fought in the Alsace and Meuse-Argonne campaigns, suffering over 5,700 casualties.

In World War II, the 29th Infantry Division was mobilized in February 1941 at Forth Meade, MD. The troops trained stateside and later in England, but no amount of preparation could have prepared them for their critical role in the D-day assault. Gen. Dwight D. Eisenhower's invasion on the coast of France's Normandy region was the largest amphibious attack in military history and the 29th Division was an integral part of its success. The division stormed ashore on Omaha Beach, one of the five points of engagement in the Allied invasion. Their battle was an especially fierce one and continued until late in the day, long after the beaches at the other landing points had been captured. Securing Omaha Beach was a critical triumph for the Allies, but the victory at "Bloody Omaha," as the battle was nicknamed, was costly, and all but eliminated entire companies in the 29th. However, the troops in the division pressed on and eventually participated in four major campaigns prior to V-E Day including Normandy, Northern France, Rhineland, and Central Europe.

In 1985 the division was again reactivated as the 29th Infantry Division (Light) with citizen soldiers from Maryland and Virginia. It is continuing the proud tradition established by the 29th in two world wars.

The 29th Infantry Division has played a key role in the defense of this country and is still doing so. It is my hope that this legislation to grant the 29th Infantry Division Association a Federal charter will be approved, and I urge my colleagues to join in this effort to honor this distinguished military unit.

Mr. President, I ask unanimous consent that the text of my bill be printed in the RECORD.

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

S. 2163

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the 29th Division Association, Incorporated, a nonprofit corporation organized under the laws of the State of New Jersey, is recognized as such and is granted a Federal charter.

POWERS

SEC. 2. The 29th Division Association, Incorporated (hereinafter in this Act referred to as the "corporation"), shall have only those powers granted to it through its bylaws and articles of incorporation filed in the State or States in which it is incorporated and subject to the laws of such State or States.

OBJECTS AND PURPOSES OF CORPORATION

SEC. 3. The objects and purposes of the corporation are those provided in its articles of incorporation and shall include—

(1) the promotion of fellowship among its members;

(2) the perpetuation of the record of the 29th Division, United States Army, in the World Wars;

(3) the promotion of the welfare of its members, their families, and the families of

the members of the Division who lost their lives in the service of Our Country;

(4) the consideration of questions concerning the military policy of the United States of America; and

(5) to uphold and defend the Constitution of the United States of America.

SERVICE OF PROCESS

SEC. 4. With respect to service of process, the corporation shall comply with the laws of the State or States in which it is incorporated and the State or States in which it carries on its activities in furtherance of its corporate purposes.

MEMBERSHIP

SEC. 5. (a) Subject to subsection (b), eligibility for membership in the corporation and the rights and privileges of members of the corporation shall be as provided in the constitution and bylaws of the corporation.

(b) Terms of membership and requirements for holding office within the corporation shall not discriminate on the basis of race, color, national origin, sex, religion, or handicapped status.

BOARD OF DIRECTORS; COMPOSITION; RESPONSIBILITIES

SEC. 6. The composition of the board of directors of the corporation and the responsibilities of such board shall be as provided in the articles of incorporation of the corporation and shall be in conformity with the laws of the State or States in which it is incorporated.

OFFICERS OF CORPORATION

SEC. 7. The positions of officers of the corporation and the election of members to such positions shall be as provided in the articles of incorporation of the corporation and shall be in conformity with the laws of the State or States in which it is incorporated.

RESTRICTIONS

SEC. 8. (a) No part of the income or assets of the corporation may inure to the benefit of any member, officer, or director of the corporation or be distributed to any such individual during the life of this charter. Nothing in this subsection shall be construed to prevent the payment of reasonable compensation to the officers of the corporation or reimbursement for actual and necessary expenses in amounts approved by the board of directors.

(b) The corporation may not make any loan to any officer, director, or employee of the corporation.

(c) The corporation may not contribute to, support, or otherwise participate in any political activity or attempt in any manner to influence legislation. No officer or director of the corporation, acting as such officer or director, may commit any act prohibited under this subsection.

(d) The corporation shall have no power to issue any shares of stock nor to declare or pay any dividends.

(e) The corporation shall not claim congressional approval or Federal Government authority for any of its activities.

LIABILITY

SEC. 9. The corporation shall be liable for the acts of its officers and agents whenever such officers and agents have acted within the scope of their authority.

BOOKS AND RECORDS; INSPECTION

SEC. 10. The corporation shall keep correct and complete books and records of account and minutes of any proceeding of the corporation involving any of its members, the board of directors, or any committee having authority under the board of directors. The corporation shall keep, at its principal office, a record of the names and addresses of all members having the right to vote in any proceeding of the corporation. All books and records of such corporation may be inspected by any member having the right to vote in any corporation proceeding, or by any agent or attorney of such member, for any proper purpose at any reasonable time. Nothing in this section shall be construed to contravene any applicable State law.

AUDIT OF FINANCIAL TRANSACTIONS

SEC. 11. The first section of the Act entitled "An Act to provide for audit of accounts of private corporations established under Federal law", approved August 30, 1964 (36 U.S.C. 1101), is amended by adding at the end thereof the following:

"(74) 29th Division Association, Incorporated.".

ANNUAL REPORT

SEC. 12. The corporation shall report annually to the Congress concerning the activities of the corporation during the preceding fiscal year. Such annual report shall be submitted at the same time as the report of the audit of the corporation required by section 2 of the Act entitled "An Act to provide for audit of accounts of private corporations established under Federal law", approved August 30, 1964 (36 U.S.C. 1101). The report shall not be printed as a public document.

RESERVATION OF RIGHT TO AMEND, ALTER, OR REPEAL CHARTER

SEC. 13. The right to amend, alter, or repeal this Act is expressly reserved to the Congress.

DEFINITION OF STATE

SEC. 14. For purposes of this Act, the term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, and the territories and possessions of the United States.

TAX-EXEMPT STATUS

SEC. 15. The corporation shall maintain its status as an organization exempt from taxation as provided in the Internal Revenue Code of 1986.

TERMINATION

SEC. 16. If the corporation fails to comply with any of the restrictions or provisions of this Act, the charter granted by this Act shall expire.●

ADDITIONAL COSPONSORS

S. 359

At the request of Mr. DECONCINI, the name of the Senator from Virginia [Mr. ROBB] was added as a cosponsor of S. 359, a bill to require the Secretary of the Treasury to mint coins in commemoration of the National Law Enforcement Officers Memorial, and for other purposes.

S. 1026

At the request of Mr. LOTT, the name of the Senator from New York [Mr. MOYNIHAN] was added as a cosponsor of S. 1026, a bill to amend the Internal Revenue Code of 1986 to provide that certain deductions of members of the National Guard or reserve units of the Armed Forces will be allowable in computing adjusted gross income.

S. 1208

At the request of Mr. WOFFORD, the names of the Senator from Wyoming [Mr. SIMPSON] and the Senator from Arkansas [Mr. PRYOR] were added as cosponsors of S. 1208, a bill to authorize the minting of coins to commemorate the historic buildings in which the Constitution of the United States was written.

S. 1450

At the request of Mrs. FEINSTEIN, the names of the Senator from Tennessee [Mr. MATHEWS] and the Senator from Mississippi [Mr. LOTT] were added as cosponsors of S. 1450, a bill respecting the relationship between the workers' compensation benefits and the benefits available under the Migrant and Seasonal Agricultural Worker Protection Act.

S. 1463

At the request of Ms. MIKULSKI, the names of the Senator from Massachusetts [Mr. KERRY] and the Senator from Ohio [Mr. METZENBAUM] were added as cosponsors of S. 1463, a bill to amend the Elementary and Secondary Education Act of 1965 to address gender equity in mathematics and science education and to assist schools and educational institutions in the elimination of sexual harassment and abuse.

S. 1587

At the request of Mr. THURMOND, his name was added as a cosponsor of S. 1587, a bill to revise and streamline the acquisition laws of the Federal Government, and for other purposes.

S. 1669

At the request of Mrs. HUTCHISON, the name of the Senator from New York [Mr. MOYNIHAN] was added as a cosponsor of S. 1669, a bill to amend the Internal Revenue Code of 1986 to allow homemakers to get a full IRA deduction.

S. 1728

At the request of Mr. BRYAN, the name of the Senator from North Dakota [Mr. CONRAD] was added as a cosponsor of S. 1728, a bill to provide regulatory capital guidelines for treatment of real estate assets sold with limited recourse by depository institutions.

S. 1805

At the request of Mr. WARNER, the name of the Senator from Colorado [Mr. BROWN] was added as a cosponsor of S. 1805, a bill to amend title 10, United States Code, to eliminate the disparity between the periods of delay provided for civilian and military retiree cost-of-living adjustments in the Omnibus Budget Reconciliation Act of 1993.

S. 1806

At the request of Mr. NICKLES, the name of the Senator from South Dakota [Mr. PRESSLER] was added as a cosponsor of S. 1806, a bill to rescind the fee required for the use of public recreation areas at lakes and reservoirs under the jurisdiction of the Army Corps of Engineers, and for other purposes.

S. 1889

At the request of Mr. CHAFEE, the names of the Senator from Wyoming [Mr. SIMPSON], the Senator from Arizona [Mr. MCCAIN], the Senator from Washington [Mrs. MURRAY], and the Senator from Hawaii [Mr. INOUYE] were added as cosponsors of S. 1889, a bill to amend title XIX of the Social Security Act to make certain technical corrections relating to physicians' services.

S. 1933

At the request of Mr. MCCAIN, the name of the Senator from North Carolina [Mr. HELMS] was added as a cosponsor of S. 1933, a bill to repeal the Medicare and Medicaid Coverage Data Bank, and for other purposes.

S. 1980

At the request of Mr. JOHNSTON, the name of the Senator from Louisiana [Mr. BREAUX]

was added as a cosponsor of S. 1980, a bill to establish the Cane River Creole National Historical Park and the Cane River National Heritage Area in the State of Louisiana, and for other purposes.

S. 1983

At the request of Mr. HEFLIN, the name of the Senator from Colorado [Mr. CAMPBELL] was added as a cosponsor of S. 1983, a bill 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 postmaster.

S. 1986

At the request of Mr. BREAUX, the name of the Senator from Arkansas [Mr. BUMPERS] was added as a cosponsor of S. 1986, a bill to amend the Internal Revenue Code of 1986 to provide tax incentives to encourage the preservation of low-income housing.

S. 2007

At the request of Mr. WOFFORD, the names of the Senator from California [Mrs. BOXER] and the Senator from North Dakota [Mr. CONRAD] were added as cosponsors of S. 2007, a bill to require the Secretary of the Treasury to mint coins in commemoration of the 50th anniversary of the end of World War II and General George C. Marshall's service therein.

S. 2029

At the request of Mr. BREAUX, the name of the Senator from Maryland [Mr. SARBANES] was added as a cosponsor of S. 2029, a bill to amend the Internal Revenue Code of 1986 to allow the taxable sale or use, without penalty, of dyed diesel fuel with respect to recreational boaters.

S. 2077

At the request of Mr. HATFIELD, the name of the Senator from Oregon [Mr. PACKWOOD] was added as a cosponsor of S. 2077, a bill to provide for waivers of the requirements of the Davis-Bacon Act with respect to certain Federal programs as such requirements relate to volunteers, and for other purposes.

S. 2105

At the request of Mrs. HUTCHISON, the name of the Senator from Mississippi [Mr. COCHRAN] was added as a cosponsor of S. 2105, a bill to amend the Immigration and Nationality Act and other laws of the United States relating to border security, illegal immigration, alien eligibility for Federal financial benefits and services, criminal activity by aliens, alien smuggling, fraudulent document use by aliens, asylum, terrorist aliens, and for other purposes.

S. 2120

At the request of Mr. INOUYE, the name of the Senator from Vermont [Mr. JEFFORDS] was added as a cosponsor of S. 2120, a bill to amend and extend the authorization of appropriations for public broadcasting, and for other purposes.

S. 2130

At the request of Mr. DOLE, the name of the Senator from Iowa [Mr. GRASSLEY] was added as a cosponsor of S. 2130, a bill to amend the Internal Revenue Code of 1986 to adjust the death benefit limits for certain policies purchased to cover payment of burial expenses or in connection with prearranged funeral expenses.

SENATE JOINT RESOLUTION 158

At the request of Mr. WOFFORD, the names of the Senator from Connecticut [Mr. LIEBERMAN], the Senator from Illinois [Ms. MOSELEY-BRAUN], and the Senator from Louisiana [Mr. JOHNSTON] were added as cosponsors of Senate Joint Resolution 158, a joint resolution to designate both the month of August 1994 and the month of August 1995 as "National Slovak American Heritage Month."

SENATE JOINT RESOLUTION 166

At the request of Mr. SPECTER, the names of the Senator from Illinois [Mr. SIMON], the Senator from Nevada [Mr. REID], the Senator from New Mexico [Mr. DOMENICI], the Senator from South Carolina [Mr. THURMOND], the Senator from Virginia [Mr. WARNER], and the Senator from Hawaii [Mr. AKAKA] were added as cosponsors of Senate Joint Resolution 166, a joint resolution to designate the week of May 29, 1994, through June 4, 1994, as "Pediatric and Adolescent AIDS Awareness Week."

SENATE JOINT RESOLUTION 175

At the request of Mr. MCCAIN, the names of the Senator from South Dakota [Mr. DASCHLE] and the Senator from Wisconsin [Mr. KOHL] were added as cosponsors of Senate Joint Resolution 175, a joint resolution to designate the week beginning June 13, 1994, as "National Parkinson's Disease Awareness Week."

SENATE JOINT RESOLUTION 178

At the request of Mr. DOMENICI, the names of the Senator from New Hampshire [Mr. SMITH], the Senator from Vermont [Mr. JEFFORDS], the Senator from Washington [Mr. GORTON], the Senator from Pennsylvania [Mr. SPECTER], and the Senator from Rhode Island [Mr. CHAFEE] were added as cosponsors of Senate Joint Resolution 178, a joint resolution to proclaim the week of October 16 through October 22, 1994 as "National Character Counts Week."

SENATE JOINT RESOLUTION 182

At the request of Mr. JOHNSTON, the names of the Senator from Pennsylvania [Mr. WOFFORD] and the Senator from California [Mrs. BOXER] were added as cosponsors of Senate Joint Resolution 182, a joint resolution to designate the year 1995 as "Jazz Centennial Year."

SENATE JOINT RESOLUTION 186

At the request of Mr. PACKWOOD, the names of the Senator from Maine [Mr. MITCHELL], the Senator from Connecticut [Mr. LIEBERMAN], the Senator from Maryland [Ms. MIKULSKI], the Senator from New York [Mr. MOYNIHAN], the Senator from Nevada [Mr. REID], the Senator from North Dakota [Mr. CONRAD], the Senator from Virginia [Mr. ROBB], the Senator from Maine [Mr. COHEN], and the Senator from Utah [Mr. HATCH] were added as cosponsors of Senate Joint Resolution 186, a joint resolution to designate February 2, 1995, and February 1, 1996, as "National Women and Girls in Sports Day."

SENATE CONCURRENT RESOLUTION 66

At the request of Ms. MIKULSKI, the names of the Senator from Virginia [Mr. WARNER] and the Senator from Kansas [Mr. DOLE] were added as cosponsors of Senate Concurrent Resolution 66, a concurrent resolution to recognize and encourage the convening of a National Silver Haired Congress.

SENATE RESOLUTION 219—RELATING TO RELIGIOUS HARASSMENT

Mr. BROWN (for himself, Mr. GRAMM, Mr. SMITH, and Mr. NICKLES) submitted the following resolution; which was referred to the Committee on Labor and Human Resources:

S. RES. 219

Whereas the liberties protected by our Constitution include religious liberty protected by the first amendment;

Whereas citizens of the United States profess the beliefs of almost every conceivable religion;

Whereas Congress has historically protected religious expression even from governmental action not intended to be hostile to religion;

Whereas the Supreme Court has written that "the free exercise of religion means, first and foremost, the right to believe and profess whatever religious doctrine one desires";

Whereas the Supreme Court has firmly settled that under our Constitution the public expression of ideas may not be prohibited merely because the content of the ideas is offensive to some;

Whereas Congress enacted the Religious Freedom Restoration Act of 1993 to restate and make clear again our intent and position that religious liberty is and should forever be granted protection from unwarranted and unjustified government intrusions and burdens;

Whereas the Equal Employment Opportunity Commission has written proposed guidelines to title VII of the Civil Rights Act of 1964, published in the Federal Register on October 1, 1993, that expand the definition of religious harassment beyond established legal standards set forth by the Supreme Court, and that may result in the infringement of religious liberty; and

Whereas such guidelines do not appropriately resolve issues related to religious liberty and religious expression in the workplace: Now, therefore, be it

Resolved, That it is the sense of the Senate that, for purposes of issuing final regulations under title VII of the Civil Rights Act of 1964 in connection with the proposed guidelines published by the Equal Employment Opportunity Commission on October 1, 1993 (58 Fed. Reg. 51266), the Commission should withdraw religion as a category covered by the proposed guidelines, hold public hearings, and receive additional public comment before issuing similar new regulations.

Mr. BROWN. Mr. President, I appreciate the indulgence of the Chamber. I rise to draw attention to a resolution that I submitted today dealing with guidelines on harassment in the workplace published by the Equal Employment Opportunity Commission on October 1, 1993.

The Equal Employment Opportunity Commission is charged under various civil rights laws with preventing harassment in a variety of areas in our working environments, and in the past they have issued an established guideline to employers to prohibit harassment of individuals based on sex, race, creed, and color. The new guidelines, though, involve a different area than has been addressed in the past. Among other areas, they specifically deal with religion. And the new guidelines are dramatically different than the legal and ethical philosophies that have affected this country over its entire history.

Our history is one of expanding individual freedom, one of expanding the right to exercise any religious belief

that one may choose. It is a history which notes the expansion of individual freedom and rights of expression. The new religious harassment guidelines do the opposite.

For the first time that I am aware of in U.S. history, we will have a Government agency act to dramatically suppress the ability of people to express their own religious beliefs, even in a way that does nothing more than simply indicate their faith or preferences, or otherwise celebrate their joy and faith at holidays or other special times. Most Members, I suspect, when they hear this, will be surprised and find it hard to believe that the Equal Employment Opportunity Commission would be acting in such a manner. Yet, what I think has happened here, simply, is that the agency has followed the same guidelines that they have used to deal with sexual harassment or guidelines similar to those that they have used to deal with racial harassment, and tried to make them fit into the determination of what constitutes harassment in religious area. They simply do not fit.

What the Commission needs to do is to now withdraw religion as a category covered by the proposed guidelines, go back through published guidelines, review them in detail, hold public hearings, receive additional public comment, and, if it chooses, publish new ones that root out religious harassment in the workplace consistent with the Constitution, rather than trying to make religion fit in with other categories of harassment regardless of their different nature.

What is involved here is enormously important. Even though it is almost hard to believe, literally what the Commission does is establish guidelines for the determination of legal liability for employers. They require employers to issue their own religious harassment guidelines and then expose employers to liability if they do not do so or if any alleged religious harassment takes place, regardless of whether the employees knew or should have known about the alleged harassing conduct.

What is of such great concern about these new guidelines? Literally, the result of their implementation would be the suppression in the workplace of individual acts of religious expression, or celebrations of religious beliefs. They literally require companies to draft a set of religious harassment guidelines, and in the event that guidelines are not prominently displayed, or in the event that individual innocent acts of religious expression take place, then the employer can be held liable.

What could be these acts of harassment? Literally, the result of implementing the guidelines will provide that a whole series of acts of simple individual religious expression could well become proof of harassment, religious harassment. I do not believe that all Americans, regardless of their religious belief or background or lack of religious belief or background, think that it is in our country's best interest to have guidelines issued that prohibit the wearing of a cross or yarmulke, that outlaw a Christmas party, that would prohibit celebration of Hanukkah at work—a wide range of things which under the guidelines could become proof of harassment.

By way of example, let me just review briefly some of the things that could be used as proof of religious harassment in the workplace. Wearing a cross around the neck or wrist or any openly visible part of the body; wearing a yarmulke; displaying a picture of Christ on an office desk or wall; wearing a T-shirt or hat with any religious picture, drawing, phrase, or commentary; having on a desk or wall anything that has any religious significance; displaying a Bible or other religious book on a desk; making openly visible on display in a work or lounge area a work of art or any item of religious significance; hosting Christmas, Hanukkah, Thanksgiving, or Easter celebrations; parties or celebrations in any form that have any religious focus or reference; allowing for opening or closing prayer or invocation at a company program, banquet, celebration or event; sharing your faith or witnessing the gospel with a fellow employee; speaking openly with employees about your religious beliefs; allowing for nativity displays or scenes in the workplace during the Christmas holiday season.

I do not know how Members react when they listen to this: "Oh, come on, let us be serious," some may say—"Surely no one could suggest these actions constitute harassment." Still others may say, "Surely no Government agency would decide they want to get involved to prohibit these kinds of things from taking place." Clearly all of us—or I hope all of us—would agree that harassing people is wrong and that religious harassment is wrong as well, even if the person genuinely intends well. But merely open displays of our religious beliefs, of our religious commitments, are quite different.

Let me draw the Members' attention to something that could be proof of harassment of a sexual nature: A calendar with a depiction of a nude person on it, displayed openly in an office. That may be interpreted—and reasonably interpreted by some—as sexual harassment; something that could be offensive to the members of the opposite sex. Think, now, of the person who, instead of displaying a calendar with a nude person on it that could be interpreted as pornographic, displays a calendar with a religious figure on that calendar. Sadly, under the proposed guidelines it could be treated the same, as proof of religious harassment.

But are they actually offensive? Does anyone really believe that it is real proof of harassment to have an office with a religious figure shown on a calendar displayed on a desk or wall? Do we really want to equate, in Government guidelines, the depiction of a pornographic nude photo with a picture of Christ? This is absurd. The guidelines as they pertain to religious harassment are idiotic. They have been disseminated without public hearings, without a great deal of thought, and without a reflection on the impact they can have.

What we have is a clear attempt to chill religious expression or displays of any religious feeling or belief in the workplace—an attempt to make the workplace a religion-free zone. None of us wants religious harassment to exist or be allowed to take place on the job. The EEOC should act in a responsible manner to assure that people in the workplace are protected from it. But the proposed religious harassment guidelines will unfortunately simply result in efforts to outlaw any visible form of religious expression from much of our daily lives.

Some will say that is not possible. No responsible employer would do that. But let me remind Members of the legal requirements of the proposed guidelines. If an employer fails to set forth guidelines in the workplace that restrict these kind of activities, they are subject to legal liability—liability imposed on them under title VII of the 1964 Civil Rights Act because the Commission has come forth with mandates through its proposed guidelines that they create religious harassment guidelines. "Well," someone would say, "surely no one at all would come up with these kind of guidelines that would prohibit this kind of conduct." But it is also true because all employers are required to create and display religious harassment guidelines.

By way of example, I would like to read to you a quote from religious harassment guidelines already created and put in place by one of America's major airlines in response to the EEOC proposed guidelines, and I might suggest, in defense of the company that put them out, that they were not their ideas. They were simply trying to comply with the new EEOC requirements:

> Technical personnel should not possess or display in any manner on premises any material which may be construed by anyone to have racial, religious or sexual overtones, whether positive or negative.

That is an unfortunately incredible guideline with regard to religious beliefs and behavior: Any material construed by anyone to have any religious overtones, whether positive or negative. Surely America should not become the land of the intolerable. Surely our agencies should not become the "thought police" and "religion police." Surely dissenting and varying ideas have enriched our lives. Surely the

very fiber of the American freedom is to promote, defend and protect people who have ideas they express both overtly and covertly. Surely the American psyche is not so fragile that we have to outlaw any public and private expressions of faith.

Mr. President, complaints to the EEOC resulted in fewer than 1.8 percent of those complaints relating to religion-based complaints. That 1.8 percent is in the entire category of religious complaints. Of the 1.8 percent, only a very small portion of those even alleged the affirmative conduct of religious harassment. The guidelines are clearly over-broad and disproportionate in their effort.

Mr. President, I am not saying that we should not abandon our commitment to prevent workers from having to face harassment on job sites, and we should not turn a blind eye to the potential of abuse even in the religious area, but these guidelines are so overreaching, and are so devastating to our individual freedom of religion and speech that they should be rejected.

I have introduced a resolution today which asks the EEOC to withdraw religion as a category covered by the proposed guidelines and issue new ones only after they have held public hearings and received additional public comment. My hope is that any new proposed guidelines for the determination of religious harassment will respect people's right of religious liberty, to express religious and political convictions without the chilling effect of regulatory intimidation and burdens on the workplace.

I hope the EEOC will withdraw religion as a category covered by the proposed guidelines by the close of business today. Also, as I stated previously, I hope that any new religious harassment guidelines developed by the EEOC respect people's religious beliefs and constitutional rights.

I ask that the Members of this body immediately review the resolution to facilitate our acting quickly to make sure our fundamental rights of religious freedom and religious expression at work are not destroyed by the overzealous proposed guidelines.

Behind me is a chart that lists over 61 different families religious affiliations as embraced by Americans. If an employer is to conscientiously fulfill his responsibilities under the EEOC guidelines, he must determine what would be considered offensive to some combination of almost every one of these 61 groups that are listed, and perhaps more as well. And then the employer must use the information gained to develop his own religious harassment guidelines. This task would be monumental.

Religious practices vary. The Sabbath is celebrated on Friday by some, on Saturday by others, on Sunday by still others. Religious holidays abound among these 61 groups. To prohibit the expression, or the celebration, or the remembrance of religion in a way that will offend no one jeopardizes the freedom of all.

I hope this Chamber will act quickly on the BROWN resolution to ensure the continuation of our religious freedoms.

AMENDMENTS SUBMITTED

FEDERAL ACQUISITION STREAMLINING ACT OF 1994

GLENN AMENDMENT NO. 1748

Mr. GLENN proposed an amendment to the bill (S. 1587) to revise and streamline the acquisition laws of the Federal Government, and for other purposes; as follows:

On page 24, line 10, strike out "that incorporates" and all that follows through "incorporated in" on line 12, and insert in lieu thereof "for a commercial item other than a commercial component, the make and model of the item being provided in accordance with".

On page 25, strike out lines 20 and 21, and insert in lieu thereof the following:

"(ii) the same information that would have been provided to the original offerors.

On page 28, between lines 22 and 23, insert the following:

"(c) SOLICITATION TO STATE NUMBER OF OFFERORS TO BE SELECTED FOR PHASE TWO REQUESTS FOR COMPETITIVE PROPOSALS.—A solicitation issued pursuant to subsection (b)(1) shall state the maximum number of offerors that are to be selected to submit competitive proposals pursuant to subsection (b)(3).

On page 28, line 23, strike out "(c)" and insert in lieu thereof "(d)".

On page 29, line 3, insert end quotation marks and a period at the end.

On page 29, strike out lines 4 through 15.

On page 50, line 21, strike out "that incorporates" and all that follows through "incorporated in" on line 23, and insert in lieu thereof "for a commercial item other than a commercial component, the make and model of the item being provided in accordance with".

On page 52, strike out lines 6 and 7, and insert in lieu thereof the following:

"(B) the same information that would have been provided to the original offerors.

On page 55, between lines 11 and 12, insert the following:

"(c) SOLICITATION TO STATE NUMBER OF OFFERORS TO BE SELECTED FOR PHASE TWO REQUESTS FOR COMPETITIVE PROPOSALS.—A solicitation issued pursuant to subsection (b)(1) shall state the maximum number of offerors that are to be selected to submit competitive proposals pursuant to subsection (b)(3).

On page 55, line 12, strike out "(c)" and insert in lieu thereof "(d)".

On page 55, line 17, insert end quotation marks and a period at the end.

On page 55, strike out line 18 and all that follows through page 56, line 2.

On page 58, line 12, strike out "severable contract" and all that follows through "services" on line 13, and insert in lieu thereof "contract for procurement of severable services".

On page 58, strike out line 17 and all that follows through page 59, line 2, and insert in lieu thereof the following:

"(b) OBLIGATION OF FUNDS.—Funds made available for a fiscal year may be obligated for the total amount of a contract entered into under the authority of subsection (a).".

On page 63, strike out lines 11 through 14, and insert in lieu thereof the following:

"(C) policies for ensuring that—

"(i) offerors are afforded an opportunity to submit relevant information on past contract performance, including performance under contracts entered into by the executive agency concerned, contracts entered into by other departments and agencies of the Federal Government, contracts entered into by agencies of State and local governments, and contracts entered into by commercial customers; and

"(ii) such information submitted by offerors is considered.

On page 63, on line 16, strike out "the policy" and insert in lieu thereof "guidance".

On page 63, on line 17, strike out "may" and insert in lieu thereof "should".

On page 68, line 9, strike out "contracting officer" and all that follows through line 17, and insert in lieu thereof "contracting officer obtains, in accordance with standards and procedures set forth in the Federal Acquisition Regulation, information on prices at which the same or similar items have been sold in the commercial market that is adequate for evaluating the reasonableness of the price of the contract or subcontract for a commercial item, or the contract or subcontract modification, as the case may be. The contracting officer may obtain such information from the offeror or contractor or, when such information is not available from that source, from another source or sources.".

On page 70, strike out lines 7 and 8, and insert in lieu thereof the following:

prices at which the same or similar items have previously been sold that is adequate for evaluating the reasonableness of the price of the proposed contract or subcontract for the procurement.

On page 78, line 25, strike out "contracting officer" and all that follows through page 79, line 8, and insert in lieu thereof "contracting officer obtains, in accordance with standards and procedures set forth in the Federal Acquisition Regulation, information on prices at which the same or similar items have been sold in the commercial market that is adequate for evaluating the reasonableness of the price of the contract or subcontract for a commercial item, or the contract or subcontract modification, as the case may be. The contracting officer may obtain such information from the offeror or contractor or, when such information is not available from that source, from another source or sources.".

On page 84, line 22, strike out "such offeror" and all that follows through line 23, and insert in lieu thereof "the same or similar items have previously been sold that is adequate for evaluating the reasonableness of the price of a proposed contract or subcontract for the procurement.".

On page 110, line 20, insert "'commercial component'," after "'commercial item',".

On page 116, line 15, insert "'commercial component'," after "'commercial item',".

On page 125, between lines 18 and 19, insert the following:

(h) RELATIONSHIP TO PROMPT PAYMENT REQUIREMENTS.—Section 2307(f) of title 10, United States Code, as amended by subsection (f), is not intended to impair or modify procedures required by the provisions of chapter 39 of title 31, United States Code, and the regulations issued pursuant to such provisions of law, that relate to progress payment

requests, as such procedures are in effect on the date of the enactment of this Act.

On page 125, line 19, strike out "(h)" and insert in lieu thereof "(i)".

On page 126, line 4, strike out "(i)" and insert in lieu thereof "(j)".

On page 133, line 2, strike out "amendments" and insert in lieu thereof "amendment".

On page 133, line 3, strike out "are" and insert in lieu thereof "is".

On page 159, strike out lines 6 through 20 and insert in lieu thereof the following:

not required—

"(A) where the contractor or subcontractor is a foreign government or agency thereof or is precluded by the laws of the country involved from making its records available for examination; and

"(B) where the agency head determines, after taking into account the price and availability of the property and services from United States sources, that the public interest would be best served by not applying paragraph (1).

"(3) Paragraph (1) may not be construed to require a contractor or subcontractor to create or maintain any record that the contractor or subcontractor does not maintain in the ordinary course of business or pursuant to another provision of law.

On page 175, line 12, strike out "for a" and all that follows through "officer's decision" on line 13, and insert in lieu thereof "made to a contracting officer".

On page 175, line 17, strike out "render a decision" and insert in lieu thereof "reply".

On page 175, line 20, strike out "reach a decision" and insert in lieu thereof "respond".

On page 175, between lines 20 and 21, insert the following:

The provisions shall not apply to a request for a contracting officer's decision under the Contract Disputes Act of 1978 (41 U.S.C. 601 et seq.).

On page 196, line 12, strike out "(as defined" and all that follows through "Administrator of General Services)" on line 14.

On page 203, between lines 3 and 4, insert the following:

"(5) A requirement that a contracting officer consider each responsive offer timely received from an eligible offeror.

On page 204, line 7, strike out "section 8(a)" and insert in lieu thereof "subsection (a) or (c) of section 8".

On page 205, line 2, strike out "will vest" and insert in lieu thereof "vests".

On page 205, line 4, strike out "and".

On page 205, line 10, strike out the period at the end and insert in lieu thereof "; and".

On page 205, between lines 10 and 11, insert the following:

(3) funds are available for making the payment.

On page 206, between lines 13 and 14, insert the following:

(c) NOTICE NOT REQUIRED IN ELECTRONIC COMMERCE.—Subsection (c)(1) of such section, as amended by section 1055(b), is further amended—

(1) by redesignating subparagraphs (A), (B), (C), (D), (E) and (F) as subparagraphs (B), (C), (D), (E), (F), and (G), respectively; and

(2) by inserting above subparagraph (B), as so redesignated, the following new subparagraph (A):

"(A) the proposed procurement is conducted by means of electronic commerce pursuant to a system that, as determined by the Administrator for Federal Procurement Policy, has the capabilities described in subsections (a) and (b) of section 4015 of the Federal Acquisition Streamlining Act of 1994;".

On page 206, line 14, strike out "(c)" and insert in lieu thereof "(d)".

On page 209, beginning on line 7, strike out "and solicitations." and all that follows through line 11, and insert in lieu thereof "of solicitations and for deadlines for the submission of offers under solicitations. Each minimum period specified for a notification of solicitation and each deadline for the submission of offers under a solicitation shall afford potential offerors a reasonable opportunity to respond.".

On page 209, line 20, insert "the Federal Acquisition Regulation contains the provisions specifically required by subsection (c) and" after "if"

On page 213, line 8, strike out "(B)" and insert in lieu thereof "(C)".

On page 220, strike out line 11 and all that follows through page 221, line 15, and insert in lieu thereof the following:

(C) in paragraph (3)—

(i) by striking out "small purchase threshold" and inserting in lieu thereof "simplified acquisition threshold"; and

(ii) by striking out "small purchase procedures" and inserting in lieu thereof "simplified procedures";

(E) in paragraph (4), by striking out "small purchase procedures" and inserting in lieu thereof "the simplified procedures"; and

(F) by inserting after paragraph (1) the following new paragraph (2):

"(2)(A) The Administrator of General Services shall prescribe regulations that provide special simplified procedures for acquisitions of leasehold interests in real property at rental rates that do not exceed the simplified acquisition threshold.

"(B) For purposes of subparagraph (A), the rental rate or rates under a multiyear lease do not exceed the simplified acquisition threshold if the average annual amount of the rent payable for the period of the lease does not exceed the simplified acquisition threshold.".

On page 224, strike out line 15 and all that follows through page 225, line 18, and insert in lieu thereof the following:

SEC. 4101. ACQUISITIONS GENERALLY.

On page 225, line 19, strike out "(b)" and insert in lieu thereof "(a)".

On page 225, line 22, strike out "(c)" and insert in lieu thereof "(b)".

On page 227, line 5, strike out "(d)" and insert in lieu thereof "(c)".

On page 227, strike out line 10, and insert in lieu thereof the following:

SEC. 4102. ACQUISITIONS FROM SMALL BUSINESSES.

On page 227, strike out lines 17 and 18, and insert in lieu thereof the following:

SEC. 4103. CONTRACTING PROGRAM FOR CERTAIN SMALL BUSINESS CONCERNS.

On page 268, line 7, insert "(a) INCREASED PERIOD.—" before "Section".

On page 268, between lines 17 and 18, insert the following:

(b) TECHNICAL AMENDMENT.—Section 22(d) of such Act is amended by designating the second sentence as paragraph (3).

On page 285, line 3, strike out the end quotation marks and the period following the end quotation marks.

On page 285, between lines 3 and 4, insert the following:

"(3) In conducting market research, the head of an executive agency should not require potential sources to submit more than the minimum information that is necessary to make the determinations required in paragraph (2).".

On page 286, line 4, insert "or executive orders" after "law".

On page 287, line 13, insert "(1)" after "ACCEPTANCE.—".

On page 287, line 17, strike out "'(1)" and insert in lieu thereof "'(A)".

On page 287, line 18, strike out "'(A)" and insert in lieu thereof "'(i)".

On page 287, line 20, strike out "'(B)" and insert in lieu thereof "'(ii)".

On page 287, line 23, strike out "'(2)" and insert in lieu thereof "'(B)".

On page 287, after line 25, insert the following:

"(2) The Federal Acquisition Regulation shall provide guidance to ensure that the criteria for determining commercial market acceptance include the consideration of—

"(A) the minimum needs of the executive agency concerned; and

"(B) the entire relevant commercial market, including small businesses.

On page 288, line 23, strike out the end quotation marks and the period following the end quotation marks.

On page 295, line 7, insert a comma after "section 4023(a)".

On page 295, line 9, strike out "section 4041" and insert in lieu thereof "section 4023(a)".

On page 298, line 19, insert "(a) OFFICE OF FEDERAL PROCUREMENT POLICY ACT AMENDMENT.—" before "Section".

On page 299, lines 1 and 2, strike out "subsection (a)(1)." and insert in lieu thereof "paragraph (1).".

On page 299, at the end of line 3 add the following: "The Federal Acquisition Regulation shall specify a minimum period for submission of a response to a solicitation of offers for a contract for the acquisition of commercial items.".

On page 299, between line 3 and 4, insert the following:

(b) SAVINGS PROVISION.—The deadlines for submission of offers that are in effect in accordance with section 18(a) of the Office of Federal Procurement Policy Act (41 U.S.C. 416(a)) and section 8(e) of the Small Business Act (15 U.S.C. 637(e)) shall continue to apply to contracts for the purchase of commercial items until the limits prescribed pursuant to paragraph (4) of section 18(a) of the Office of Federal Procurement Policy Act (as added by subsection (a)) are incorporated in the Federal Acquisition Regulation, as required by such paragraph.

On page 300, strike out lines 7 and 8, and insert in lieu thereof the following:

(3) subsections (a) and (d) of section 8 of the Small Business Act (15 U.S.C. 637); or

On page 303, between lines 1 and 2, insert the following:

(e) REQUIREMENT FOR CLARITY.—Officers and employees of the Federal Government who prescribe regulations to implement this Act and the amendments made by this Act shall make every effort practicable to ensure that the regulations are concise and are easily understandable by potential offerors as well as by Government officials.

On page 303, line 2, strike out "(e)" and insert in lieu thereof "(f)".

On page 303, line 19, insert at the end the following: "The report shall include the Comptroller General's evaluation of the extent to which the departments and agencies of the Federal Government, in implementing this Act and the amendments made by this Act, are reducing acquisition management layers and associated costs.".

COCHRAN AMENDMENT NO. 1749

Mr. COCHRAN proposed an amendment to the bill S. 1587, supra; as follows:

On page 176, between lines 2 and 3, insert the following sections:

SEC. 2555. AUTHORITY FOR DISTRICT COURTS TO OBTAIN ADVISORY OPINIONS FROM BOARDS OF CONTRACT APPEALS IN CERTAIN CASES.

Section 10 of the Contract Disputes Act of 1978 (41 U.S.C. 609) is amended by adding at the end the following new paragraph:

"(f)(1) Whenever an action involving an issue described in paragraph (2) is pending in a district court of the United States, the district court may request a board of contract appeals to provide the court with an advisory opinion on the matters of contract interpretation at issue.

"(2) An issue referred to in paragraph (1) is any issue that could be the proper subject of a final decision of a contracting officer appealable under this Act.

"(3) A district court shall direct any request under paragraph (1) to the board of contract appeals having jurisdiction under this Act to adjudicate appeals of contract claims under the contract or contracts being interpreted by the court.

"(4) Within ninety days after receiving a request for an advisory opinion under paragraph (1), a board of contract appeals shall provide the advisory opinion to the district court making the request.".

SIMON (AND OTHERS) AMENDMENT NO. 1750

Mr. GLENN (for Mr. SIMON, for himself, Ms. MOSELEY-BRAUN, and Mr. D'AMATO) proposed an amendment to the bill S. 1587, supra; as follows:

In S. 1587, strike out on page 194, line 7, through page 195, line 14 (Section 3051).

FORD AMENDMENT NO. 1751

Mr. FORD proposed an amendment to the bill S. 1587, supra; as follows:

On page 133, strike out line 22 and all that follows through page 134, line 3, and insert in lieu thereof the following:

(a) UNALLOWABILITY OF COSTS TO INFLUENCE LOCAL LEGISLATIVE BODIES.—Subsection (e)(1)(B) of section 2324 of title 10, United States Code, is amended by striking out "or a State legislature" and inserting in lieu thereof ", a State legislature, or a legislative body of a political subdivision of a State".

(b) COMPTROLLER GENERAL EVALUATION.—Section 2324 of such title is amended by striking out subsection (*l*).

(c) COVERED CONTRACT DEFINED.—Subsection (m) of such section is amended to read as follows:

On page 138, line 8, strike out "or a State legislature" and insert in lieu thereof ", a State legislature, or a legislative body of a political subdivision of a State".

GRASSLEY (AND ROTH) AMENDMENT NO. 1752

Mr. GRASSLEY (for himself and Mr. ROTH) proposed an amendment to the bill S. 1587, supra; as follows:

On page 205, between lines 10 and 11, insert the following:

(c) DISBURSEMENTS TO BE MATCHED WITH OBLIGATIONS.—The simplified acquisition procedures shall include procedures that ensure that each request for a disbursement is matched with a particular obligation before the disbursement is made under the payment terms provided for under subsection (a).

NOTICES OF HEARINGS

COMMITTEE ON INDIAN AFFAIRS

Mr. INOUYE. Mr. President, I would like to announce that the Senate Committee on Indian Affairs will be holding a hearing on Wednesday, June 8, 1994, beginning at 2:30 p.m., in 485 Russell Senate Office Building on S. 1936, the Indian Integrated Resources Management Planning Act; and S. 2067, a bill to elevate the position of Director of Indian Health Service to Assistant Secretary of Health and Human Services, to provide for the organizational independence of the Indian Health Service within the Department of Health and Human Services and for other purposes.

Those wishing additional information should contact the Committee on Indian Affairs at 224-2251.

Mr. President, I also would like to announce that the Senate Committee on Indian Affairs will be holding an oversight hearing on Friday, June 10, 1994, beginning at 9:30 a.m., in 485 Russell Senate Office Building on Off-Reservation Boarding Schools.

Those wishing additional information should contact the Committee on Indian Affairs at 224-2251.

SUBCOMMITTEE ON NUTRITION AND INVESTIGATIONS

Mr. LEAHY. Mr. President, I would like to announce that the Senate Committee on Agriculture, Nutrition, and Forestry Subcommittee on Nutrition and Investigations will hold a hearing on S. 1614, Better Nutrition and Health for Children Act of 1993. The hearing will be held on Friday, June 10, 1994, at 9:30 a.m. in SR-332. Senator TOM HARKIN will preside.

For further information, please contact Mark Halverson at 224-3254.

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. JOHNSTON. Mr. President, I would like to announce for the public that a hearing has been scheduled before the full Committee on Energy and Natural Resources.

The hearing will take place Tuesday, June 14, 1994 at 10 a.m. in room 366 of the Senate Dirksen Office Building in Washington, DC.

The purpose of the hearing is to receive testimony from Patricia Fry Godley, nominee to be Assistant Secretary of Energy for Fossil Energy, and Joseph F. Vivona, nominee to be Chief Financial Officer for the U.S. Department of Energy.

For further information, please contact Rebecca Murphy at (202) 224-7562.

Mr. President, I also would like to announce that a hearing has been scheduled before the Committee on Energy and Natural Resources to receive testimony on a proposed bill regarding Hawaiian homelands.

The hearing will take place on Thursday, June 16, 1994, beginning at 2 p.m. in room SD-366 of the Dirksen Senate Office Building in Washington, DC.

Because of the limited time available for the hearing, witnesses may testify by invitation only. However, anyone wishing to submit a written statement is welcome to do so by sending two copies to the Committee on Energy and Natural Resources, 304 Dirksen Senate Office Building, Washington, DC 20510.

For further information regarding the hearing, please contact Dionne Thompson of the committee staff at (202) 224-5925

SUBCOMMITTEE ON WATER AND POWER

Mr. BRADLEY. Mr. President, I would like to announce for my colleagues and the public that a hearing has been scheduled before the Subcommittee on Water and Power of the Committee on Energy and Natural Resources.

The purpose of the hearing is to receive testimony on the implementation of the Central Valley Project Improvement Act and the coordination of these actions with other Federal protection and restoration efforts in the San Francisco Bay/Sacramento-San Joaquin Delta.

The hearing will take place on Thursday, June 23, 1994, at 2 p.m. in room 366 of the Dirksen Senate Office Building, First and C Streets, NE., Washington, DC.

Because of the limited time available for the hearing, witnesses may testify by invitation only. However, those wishing to submit written testimony for the printed hearing record should send their comments to the Committee on Energy and Natural Resources, U.S. Senate, Washington, DC 20510, Attention: Leslie Palmer.

For further information, please contact Dana Sebren Cooper, (202) 224-4531 or Leslie Palmer, (202) 224-6836 of the subcommittee staff.

Mr. President, I also would like to announce for my colleagues and the public that two field hearings have been scheduled before the Subcommittee on Water and Power of the Committee on Energy and Natural Resources.

The purpose of the first hearing is to receive testimony on a coordinated approach to the evaluation and resolution of outstanding ecological problems related to water quality, water quantity, endangered species, and wildlife habitat in the Klamath Basin, OR. The hearing will take place on Wednesday, July 6, 1994, at 10 a.m., in the Oregon Institute of Technology, 3201 Campus Drive, Klamath Falls, OR.

The purpose of the second hearing is to receive testimony on S. 2115, a bill to amend the Federal Power Act to remove the jurisdiction of the Federal Energy Regulatory Commission to license projects on fresh waters in the State of Hawaii. The hearing will take place on Friday, July 8, 1994, at 9 a.m., in the East-West Center, Hawaii Imin International Conference Center, 1777 East West Road, Honolulu, HI.

Due to the limited time available for the hearing, witnesses may testify by

invitation only. However, anyone wishing to submit written testimony to be included in the printed hearing record is welcome to do so. Those persons wishing to submit written testimony should mail five copies of the statement to the Committee on Energy and Natural Resources, U.S. Senate, Washington, DC. 20510, Attention: Leslie Palmer.

For further information, please contact Dana Sebren Cooper, counsel for the subcommittee at (202) 224-4531 or Leslie Palmer at (202) 224-6836.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON FOREIGN RELATIONS

Mr. FORD. Mr. President, I ask unanimous consent that the Committee on Foreign Relations, be authorized to meet during the session of the Senate on Tuesday, June 7, at 4:30 p.m. to hold a nomination hearing on Maria Otero, to be Chairman of the Board of Directors of the Inter-American Foundation.

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

SUBCOMMITTEE ON DEFENSE TECHNOLOGY, ACQUISITION AND INDUSTRIAL BASE

Mr. FORD. Mr. President, I ask unanimous consent that the Subcommittee on Defense Technology, Acquisition and Industrial Base of the Committee on Armed Services be authorized to meet on Tuesday, June 7, 1994, at 3:30 p.m., in closed session, to mark up the defense technology, acquisition, and industrial base programs for fiscal year 1995.

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

SUBCOMMITTEE ON REGIONAL DEFENSE AND CONTINGENCY FORCES

Mr. FORD. Mr. President, I ask unanimous consent that the Subcommittee on Regional Defense and Contingency Forces of the Committee on Armed Services be authorized to meet on Tuesday, June 7, 1994, at 5 p.m., in closed session, to mark up the regional defense and contingency forces programs for fiscal year 1995.

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

ADDITIONAL STATEMENTS

THE POUDRE RIVER TRAIL GROUND BREAKING

• Mr. BROWN. Mr. President, congratulations to the citizens of the Cache la Poudre River Basin on this ground breaking for the Poudre River Trail. As the sponsor of the National Trails Day resolution, I am delighted that the 1994 celebration is marked by the kickoff of this visionary project.

Our trails are a key to preserving the special quality of life in Colorado. Developing and preserving recreational areas as we grow is essential. In an era of increased awareness of physical fitness, trails provide healthy, inexpensive entertainment opportunities for people of all ages.

My interest in the Poudre River corridor is longstanding. In the early 1970's, I was active in promoting an expansion of Island Grove Park. As a State senator from Larimer, Weld and Morgan Counties, I was the prime sponsor of Colorado's Conservation Trust Fund legislation.

In 1986, I was the sponsor of legislation designating a portion of the Cache la Poudre as wild and scenic—the only stretch of river in Colorado to have received such designation. Currently, I am sponsoring S. 1270, the Cache la Poudre River Basin Heritage Study Act. Creation of the Cache la Poudre National Water Heritage Area would honor more than a century of water development and conservation in the basin—which changed the region from a semi-arid desert into some of the most productive farmland in the world. This act will allow city, county and State officials to work together to exchange surplus land for land along the floodplain for open space.

One of the most important aspects of the heritage study and demonstration project is that its management remains in the hands of the people who understand the river best—the people who reside in the Poudre River basin.

Again, I congratulate you on this ground breaking. I look forward to being here with you in the near future when you dedicate the finished trail for the use of the citizens of this area. Good planning is not a product of stopping progress but of preparing for the future.

Congratulations on a major step forward.•

TRIBUTE TO SHERMAN MITCHELL

• Mr. RIEGLE. Mr. President, today I rise to pay tribute to Mr. Sherman Mitchell, an outstanding and valued member of my hometown community of Flint, MI. On the evening of June 12, 1994, Mr. Mitchell, a renowned international jazz musician, will be honored by friends, family, and the citizens of the Greater Flint area.

A native of Flint, MI, Mr. Mitchell's musical studies began in 1948 at the Flint community schools' Whittier Junior High School. It was the start of a dynamic and sensational 50-year musical career.

This self-taught jazz musician graduated from Flint Central High School in 1948. During the years that followed, Mr. Mitchell continued to develop his talent by playing everything from blues and jazz to classical music. He performed on the trombone, oboe, saxophone, drums and bass, working as a soloist, section player, sideman, and band leader.

He wrote and arranged the musical portion of the Public Broadcasting Service series "Black Biography," which aired in 1983. In 1988, Mr. Mitchell was commissioned to compose and score music for a television special on the American Broadcasting Co. That same year, he composed and recorded a nationally reviewed record album entitled "Far From Tranquil." In addition, he wrote the score for a second album, "Once Upon a Lifetime," which was released in 1992.

Mr. Mitchell has performed with many outstanding jazz artists including J.C. Heard, Clark Terry, Sonny Stitt, Joe Henderson, and Errol Garner. He is a regular at the Detroit Montreux Jazz Festival and has performed in Mexico, Canada, and Europe.

For 50 golden years, Sherman Mitchell has been Flint's jazz ambassador. His commitment to the Flint community is evident by the fact that he has passed up numerous opportunities in order to remain there to raise a family and start a musical instrument repair business. He never refuses to perform for community events, and often does so gratis. Mitchell's unique style is echoed by the many aspiring and successful musicians who began their own careers as members of one of his combos.

And so, I would like to commend Sherman Mitchell for his tremendous commitment and musical contribution to the people of Flint, MI. His presence has been an inspiration to all lovers of music, from pre-schoolers to goldenagers. I am happy to join with his family, and colleagues in wishing him well as he enters this new phase in his life.•

THE ACHIEVEMENT OF THE SOUTHWESTERN PENNSYLVANIA AUTHORITY RAILWORKS PROJECT

• Mr. WOFFORD. Mr. President, I am pleased today to recognize the achievement of the Southwestern Pennsylvania Authority [SEPTA]. The American Society of Civil Engineers recently conferred its 1994 Outstanding Civil Engineering Achievement Award of Merit on SEPTA's railworks project. The society's annual award recognizes engineering projects that demonstrate outstanding skill and innovative contribution to the field of civil engineering. And SEPTA's giant undertaking of rehabilitating Philadelphia's rail lines while providing outstanding commuter and environment friendly service is worthy of such an honor.

I congratulate SEPTA for its excellence in engineering, its continued dedication to improving the lives of Pennsylvanians, and I ask that the following statement from the American Society of Civil Engineers be included in the RECORD.

The statement follows:

PHILADELPHIA'S SEPTA RAILWORKS WINS ENGINEERING AWARD

WASHINGTON, May 6, 1994.—The American Society of Civil Engineers (ASCE) confers its 1994 Outstanding Civil Engineering Achievement (OCEA) Award of Merit on the Southeastern Pennsylvania Transportation Authority (SEPTA) Railworks project. SEPTA Railworks replaced or rehabilitated 25 bridges along the main commuter rail line in Philadelphia, enhancing an energy-efficient and environmentally friendly transportation resource while minimizing disruption to commuter service and surrounding neighborhoods.

The annual OCEA awards recognize engineering projects that demonstrate outstanding engineering skills and represent innovative contributions to civil engineering and human progress. An ASCE judging panel selected SEPTA Railworks, one or 17 nominees, for one of three Awards of Merit.

Replacing a series of badly-deteriorated bridges on a critical commuter railway in a densely-populated urban area presented daunting challenges: it was the largest engineering and construction effort ever undertaken by SEPTA; more than 100 separate entities would have to be coordinate to accomplish the work; 90,000 daily riders would suffer major disruptions in rail service; new bridge construction would occur in close proximity to homes and businesses; and time available to do the work was severely limited.

SEPTA chose a bold approach: it shut down all railroad operations within the affected five-mile section for two periods totalling ten months in duration. During the shutdowns, construction continued 24 hours per day for over eight months. Due to meticulous engineering, hard work and effective coordination, rail operations resumed on schedule after both stoppages. Despite the frenzied pace, the estimated final construction cost of almost $140 million is more than $7 million below budget.

In addition to the complete replacement of 20 bridges and substantial rehabilitation of five others, the Railworks project included several enhancements of the railway infrastructure. SEPTA reduced truck curvatures and installed continuously welded rail to make possible smoother rides at higher speeds. Two new handicap-accessible stations were constructed. And new signal and switching systems will reduce train delays.

The Railworks project team adopted the motto "Building New Connections" to highlight its commitment to achieve engineering and construction success while maintaining social responsibility and community involvement. SEPTA offered numerous construction contracts to maximize participation of local firms. Construction Planning continuously evaluated the impact of operations on local residents. And the project diligently pursued the goals of providing jobs for local residents, keeping the community informed of operations, and assisting in resolution of problems when they occurred.

In addition to its internal engineering staff, SEPTA employed the services of Gannett Fleming Transportation Engineers and Planners and STV/Sanders and Thomas as design consultants, and O'Brien-Kreitzberg & Associates as construction manager.

Founded in 1852, ASCE represents more than 115,000 civil engineers and is America's oldest national engineering society.•

SONS OF ITALY FOUNDATION

• Mr. LIEBERMAN. Mr. President, I want to congratulate the Sons of Italy Foundation [SIF] for its highly successful sixth annual National Education and Leadership Award Ceremony, which I had the pleasure of serving as host on May 19, 1994. I commend this organization for the encouragement it provides to some of our Nation's outstanding young scholars and future leaders.

At this event, the SIF awarded scholarships to the winners of the 1994 National Leadership Grant Competition, including a scholarship in the name of Louis J. Freeh, Director of the Federal Bureau of Investigation.

In selecting Director Freeh as an honoree and establishing a scholarship in his name, the SIF made an excellent choice. He stands as living proof that hard work, discipline, education, integrity, intelligence, and perseverance are still rewarded in our society. He is an outstanding role model, not only for Americans of Italian heritage, but for all Americans.

OSIA's long and distinguished record of generous support for the education of America's youth should be highly praised by this revered body and indeed, by all citizens concerned about our educational system. During the past century, OSIA and the SIF have contributed nearly $20 million in scholarships.

I am pleased that a number of my colleagues in the U.S. Senate and the U.S. House of Representatives rearranged their busy schedules to attend this important and inspirational event. They included Senate majority leader MITCHELL, Senators D'AMATO, DECONCINI, and LEAHY, and Representatives MORAN, PALLONE, and MORELLA.

The leaders of the OSIA and SIF have demonstrated great foresight by encouraging the achievements of the outstanding young people of America through merit-based financial aid for higher education and by recognizing them at a gala event in the Nation's Capital. I commend Ms. Joanne L. Strollo, national president of the OSIA and chairman of the SIF and the first woman to hold these two positions; Mr. Valentino Ciullo, president of the SIF; Mr. Joseph Sciame, chairman of the OSIA's National Education Committee, and the vice president of St. John's University; and Dr. Phillip R. Piccigallo, national executive director of OSIA and the SIF, for their leadership roles in the 1994 National Education & Leadership Award Ceremony and the National Leadership Grant Competition.

Listed below are the 13 winners of the 1994 National Leadership Grant Competition. These young men and women represent the highest level of academic achievement and leadership potential in our country today.

Christopher V. Vitale, the Honorable Louis J. Freeh Scholarship.

Gabriel L. Bevilacqua, Jr., the Henry Salvatori Scholarship.

Jennifer A. Cardello, the Hon. Silvio O. Conte Scholarship.

Christopher J. Linehan, Giovanni Glessi Scholarship.

Aurelio Teleman, Coach Lou Carnesecca/Italian Heritage Scholarship.

Karla Lambert, Daniel A. D'Amico/Annette Funicello Scholarship.

Christian Ialongo, Pearl S. Tubiolo Scholarship.

Elizabeth M. Antognoli, the Honorable Frank J. Montemuro, Jr. Scholarship.

Tony Botti, Michael Cappellotti Family Scholarship.

Michael Musante, Joanne L. Strollo Scholarship.

Geraldine Visco Capello, Dr. Vincenzo Sellaro Scholarship.

Gino M. DiVenuti, Dr. Anthony S. Fauci Scholarship.

Thomas A. Gentile, the Hon. Antonin Scalia/Lodges of OSIA Scholarship.•

TRIBUTE TO GORDON DURNIL

• Mr. LUGAR. Mr. President, I rise today to recognize Mr. Gordon Durnil of Indianapolis, IN, for receiving the National Wildlife Federation's Conservation Achievement Award. I have had the distinct pleasure of knowing Gordon personally for more than 25 years, and I appreciate this opportunity to commend him for his work in the area of conservation.

Gordon has dedicated many years to public service. Most recently, he retired as chairman of the United States Section of the International Joint Commission [IJC], a binational body that advises the United States and Canadian governments on transboundary environmental problems and solutions. As chairman, he led the campaign to ban from the Great Lakes toxins that cause birth defects, immune system problems, and neurological impairments. Gordon's work on the IJC has contributed greatly to protection of the environment of Indiana and the entire Great Lake region.

During his tenure with the IJC, Gordon became an expert in many areas, including shared water resources, multijurisdictional approaches to water and air pollution, problems posed to human health as a result of exposure to persistent toxic substances, remedial action plans to restore severely degraded areas, and multinational exercises in environmental education. Gordon also was responsible for initiating several reports regarding persistent toxic substances and human health.

Gordon's service to the IJC also includes serving as head of delegation at the U.N. Conference on Environment and Development in Rio de Janeiro, Brazil. As a result of Gordon's effort to streamline the IJC's binational office in Windsor, ON, more funds were made available for scientific programs.

Gordon received his bachelor of science degree from the Indiana University School of Business and his doctor of jurisprudence degree from the Indiana University School of Law. In addition, Gordon has completed training in alternative dispute resolution and advanced civil mediation and he is a certified professional civil mediator. Gordon has the much needed ability to bring disputing parties to the negotiation table to agree on workable solutions.

In addition, Gordon is a member of the alternative dispute resolution and environmental sections of the Indiana State Bar Association and the Society of Professionals in Dispute Resolution. He is a member of the board of directors and finance chairman of the Indiana Ronald McDonald House.

On June 11, 1994, the Indiana Wildlife Federation will be holding its annual meeting at Spring Mill State Park in Mitchell, IN. It is at this meeting that the National Wildlife Federation will present Gordon with the Conservation Achievement Award. I congratulate Gordon for his achievement and thank him for his years of dedication to Indiana and the environment.●

TRIBUTE TO TRUMBULL HIGH SCHOOL

● Mr. LIEBERMAN. Mr. President, I rise today to recognize the extraordinary accomplishment of a group of young people from my home State of Connecticut. The following students from Trumbull High School, accompanied by their teacher Rita Altieri, participated in the national finals of the We The People . . . The Citizen and the Constitution program in Washington, DC from April 30–May 2 where they were successful in winning the unit award for their outstanding comprehension of the first amendment: Jean Baiardi, Jeffrey Burns, Ashley Coyne, Jessica Devine, Lisa DiDomenico, Brian DiStassio, Jaime Felberbaum, Dana Heitlinger, Alison Kelly, Erin Kelly, Julie Klunk, Cheryl Konopka, Roudabeh Latifpour, Ricardo Luzietti, James Maricondo, Steven Merrick, Bianca Milazzo, Brian Noehren, Rena Paris, Matthew Park, Perry Rountos, Matthew Sewell, Erica Silverman, Sara Usilton, Sujal Vaidyam, David Weisman, Sondra Weiss, Bret Wiener, Stacey Wilcoxson, and John Zbell.

These exceptional students competed against 47 classes from throughout the country and emerged as the classroom with the greatest overall understanding of the first amendment to the Constitution of the United States. The competition resembles the structure of a congressional hearing and was developed and hosted by the Center for Civic Education. The purpose of the program is to foster understanding, interest, and participation in the American political process of representative democracy.

The students from Trumbull High School, whose names appear above, have distinguished themselves in this unique forum of learning. Their excellent work in this program will help prepare them to be leaders in our democracy. Their success in the program deserves the recognition and appreciation of the people of Connecticut and the Nation at large.●

RECOGNITION OF DENVER EAST HIGH SCHOOL STUDENTS

● Mr. BROWN. Mr. President, I would like to take a moment to recognize an outstanding group of students from Denver East High School in Denver, CO.

The group participated in a national competition of We the People . . . The Citizen and the Constitution, a program in which many honorable members of this Senate serve in an advisory committee capacity. The competition, which took the form of a simulated congressional hearing, tested the students on their knowledge of the fundamental values of American constitutional government.

The Denver east students placed among the top 10 winners at the competition. They participated under the leadership of Dr. Deanna Morrison, an American government teacher at the high school. At this time, I would like to recognize each of the students who represented the high school individually. They were:

John Akolt, Aisha Alkayali, Ned Augenblick, Eric Berson, Kendra Bird, Noah Borwick, John Freyer, Susan Givens, Andrea Gibson.

Erin Gretzinger, Tyler Haring, Daniel Hoefer, Thomas Kerr, Kimberly Knous, Sarah Liegl, Justin Milner, Eric Nussbaumer, Kristin Petri.

Ashby Plain, Nickie Robinson, Laura Ruttum, Lafayette Scott-Pierre, Jessica Smith, Alexis Sophocles, Gwendolyn Turner, Lane Volpe, Graham Williams.

At a time when our attention toward young people seem to focus only on negative events, I am proud to recognize these exceptional young men and women for the excellence they have displayed in their knowledge of the ideals and values of the U.S. Constitution.●

HOMICIDES BY GUNSHOT IN NEW YORK CITY

● Mr. MOYNIHAN. Mr. President, I rise to announce to the Senate that during the last 2 weeks, 44 people were killed in New York City by gunshot, bringing this year's total to 425.●

TWO RESOLUTIONS ADOPTED BY THE NATIONAL ASSOCIATION OF REGULATORY COMMISSIONERS

● Ms. MOSELEY-BRAUN. Mr. President, I rise today to bring to my colleagues' attention two important resolutions adopted by the National Association of Regulatory Commissioners [NARUC] regarding our Nation's spent nuclear fuel management program.

Our Nation's 109 nuclear reactors are currently storing 25,000 tons of spent nuclear fuel on-site in spent fuel pools and dry cask storage systems all across the United States. With more nuclear reactors than any other State, Illinois alone is currently storing 3,500 tons of spent nuclear fuel.

Mr. President, the Nuclear Waste Policy Act of 1982 requires the Department of Energy [DOE] to site a permanent high-level nuclear waste repository by 1998. While the Department of Energy is currently investigating the suitability of the Yucca Mountain site in Nevada, it is critically behind schedule in meeting its 1998 deadline.

In order to support these suitability studies for our Nation's spent nuclear fuel management program, the Nuclear Waste Policy Act requires utility ratepayers to contribute to the Nuclear Waste Fund. To date, Illinois ratepayers have deposited more than $1.1 billion into this fund through higher electric bills. Collections from ratepayers nationwide have totaled more than $7.6 billion. However, since the Federal Spent Nuclear Fuel Management Program is governed by rules regarding budgetary outlays, there is currently a $4 billion surplus in the Nuclear Waste Fund.

On November 18, 1994, I wrote to President Clinton expressing my concerns over the progress of our Nation's Spent Nuclear Waste Management Program and my support for Secretary O'Leary's efforts to use funds in the Nuclear Waste Fund to support this program in a timely and efficient manner.

Mr. President, utilities and ratepayers are concerned about the program's delays for two very important reasons. First, 23 nuclear plant sites will have exhausted their existing spent nuclear fuel storage capacity by 1998; 73 by 2010. Utilities and ratepayers are also concerned because they will be asked to pay twice for the disposal of nuclear waste if the Department of Energy fails to meet its 1998 deadline—first through contributions to the Nuclear Waste Fund, and a second time through higher electric rates for the construction of temporary on-site spent fuel storage facilities.

This issue is simply about equity and responsibility. The Nation's utilities entered the nuclear energy era with the promise that the Federal Government would take responsibility for ensuring the ultimate disposal of spent nuclear fuel. Electric utility customers

have fulfilled their part by contributing to the Nuclear Waste Fund. It is time for the Department of Energy to meet its responsibilities outlined in the Nuclear Waste Policy Act of 1982.

Mr. President, I would like to conclude my remarks by urging my colleagues to heed NARUC's advice and ensure that the Nation's Spent Nuclear Fuel Management Program moves forward expeditiously.

I ask that the NARUC resolutions be printed at this point in the RECORD.

The resolutions follows:

RESOLUTION TO ENCOURAGE THE DEVELOPMENT OF PRIVATE TEMPORARY STORAGE FACILITIES

Whereas, The United States Department of Energy (DOE) has the responsibility to dispose of spent nuclear fuel storage generated by utilities in their domestic nuclear power reactors; and

Whereas, The DOE has the responsibility to accept title to, transport and dispose of the spent nuclear fuel generated by utilities beginning not later than January 31, 1998; and

Whereas, The National Association of Regulatory Utility Commissioners (NARUC) believes the DOE will not develop a Federal high-level nuclear waste repository or facility for the storage of spent nuclear fuel which would be operational by January 31, 1998; and

Whereas, Without an operational repository, utilities are required to provide for additional temporary spent nuclear fuel storage at significant cost to the nuclear electric utility and their ratepayers; and

Whereas, The Mescalero Apache Nation, the New Corporation and other parties are interested in developing a temporary facility for the storage of spent nuclear fuel; and

Whereas, The DOE and the Congress has discontinued funding of the efforts of local government entities, including the Mescalero Apache Nation, to develop a Federal Monitored Retrievable Storage facility; and

Whereas, Despite the termination of funding by the Congress and the DOE, the Mescalero Apache Nation, and New Corporation and other parties continue to express their readiness to negotiate a voluntary siting agreement for an MRS as outlined in the 1987 amendments to the Federal Nuclear Waste Policy Act and maintain an interest in developing such a temporary storage facility; now, therefore, be it

Resolved, By the Executive Committee of the NARUC, convened at its 1994 Winter Committee in Washington, D.C., that it supports the nuclear electric utility industry working to review the development and operation of a private temporary storage facility for spent nuclear fuel; and be it further

Resolved, That the NARUC urges DOE to advocate restoration of Phase II-B funding for prospective volunteer jurisdictions and if necessary to transfer funds from the site characterization effort for a permanent repository for this effort; and be it further

Resolved, That DOE increase its efforts in assisting with the development of private facilities; and be it further

Resolved, That the NARUC Executive Committee adopts the following principles;

1. High-level radioactive waste management is the responsibility of this generation;

2. Health, safety and minimization of environmental impact are the overriding priorities in managing civilian nuclear waste with other important considerations including: geographical equity, public acceptance, and cost effectiveness.

3. The Department of Energy has a responsibility to take title to and remove spent fuel from reactors beginning in 1998;

4. Consistent with global scientific consensus and Congressional mandate, deep geologic disposal of spent fuel should continue as the ultimate objective of the federal government's civilian nuclear waste management program;

5. Compensation alone would not satisfy the Department of Energy's obligation to remove spent fuel from reactor sites;

6. Even though central Department of Energy interim spent fuel storage facilities may be available, subject to the above principles, each utility should have the option to pursue storage on-site or elsewhere should it be more desirable to do so; and be it further

Resolved, That the NARUC Executive Committee adopts the following recommendations:

1. The Federal government needs to establish interim off-site spent fuel storage capability to allow the Department to take title to and remove spent fuel from reactor sites starting in 1998;

2. The voluntary process, including both the public and private efforts for locating interim storage facilities, should continue;

3. The Federal government should initiate a serious effort to locate an interim storage facility on Federal or private property;

4. The Department of Energy should increase the planned rate of acceptance of spent fuel from reactors and Congress should increase the capacity limit of interim spent fuel storage facilities in order to efficiently and effectively accommodate actual interim storage needs;

5. The Department of Energy should take immediate action to ensure that the necessary infrastructure (such as transportation capability) exists and will be available to support the acceptance of spent fuel for interim storage in 1998;

6. The Nuclear Regulatory Commission should be asked to review its regulations, and implementation of those regulations, for safety, added value, and to ensure the cost effectiveness of interim storage facilities; and be it further

Resolved, That this resolution be communicated to the United States Congress and to the Secretary of Energy along with a copy of the dialogue report.

RESOLUTION REGARDING THE NARUC DIALOGUE ON SPENT FUEL MANAGEMENT CONCLUDED FEBRUARY 25, 1994

Whereas, Approximately 20% of the United States electricity is generated using nuclear energy; and

Whereas, The major by-product for nuclear generation is spent nuclear fuel, which has been produced and stored in storage pools at over 70 commercial reactor sites; and

Whereas, Most reactors do not have sufficient pool storage capacity to accommodate all of the spent nuclear fuel; and

Whereas, Congress, in the Nuclear Waste Policy Act of 1982, directed the Department of Energy to develop a system to manager commercially-generated spent fuel by 1998, in exchange for electric utility ratepayers payments into the Federal Nuclear Waste Fund; ratepayers will have paid $10 billion by 1998; and

Whereas, While the Department of Energy is making progress toward the establishment of a repository, such repository is not expected to become available until 2010 or later, therefore, the Subcommittee on Nuclear Issues-Nuclear Waste initiated a dialogue of stakeholders including utility commissioners, utility chief executive officers, an environmentalist, a representative of the State of Nevada, and a representative of the scientific community in Nevada; and

Whereas, The dialogue was initiated to develop a consensus on how best to deal with interim storage of spent nuclear fuel, given the existing political structure; and

Whereas, The dialogue produced a report dated February 25, 1994 which included minority reports from the State of Nevada and the environmental representative; and

Whereas, It is the intent of the NARUC to continue discussions with interested parties regarding implementation of specific recommendations and legislative changes required; now, therefore, be it

Resolved, That the Executive Committee of the National Association of Regulatory Utility Commissioners (NARUC), convened at its 1994 Winter Committee Meetings in Washington, D.C. accepts the report of the NARUC Dialogue On Spent Fuel Management presented to this body by the Standing Committee on Electricity; and be it further

Resolved, That the operation of a private temporary storage facilities does not obviate the need for DOE to meet its responsibility to begin accepting fuel from utilities in 1998.●

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 Celeste Coco-Ewing, a member of the staff of Senator BREAUX, to participate in a program in Germany sponsored by the Friedrich-Naumann Foundation from May 28 through June 5, 1994.

The committee determined that no Federal statute or Senate rule would prohibit participation by Ms. Coco-Ewing in this program.

The select committee received notification under rule 35 for Keith Gouveia, a member of the staff of Senator INOUYE, to participate in a program in Germany sponsored by the Konrad-Adenaur Foundation, from May 28 through June 4, 1994.

The committee determined that no Federal statute or Senate rule would prohibit participation by Mr. Gouveia in this program.

The select committee received notification under rule 35 for Danielle Pletka, a member of the staff of Senator HELMS, to participate in a program in Germany sponsored by the Konrad-Adenaur Foundation, from May 28 through June 4, 1994.

The committee determined that no Federal statute or Senate rule would prohibit participation by Ms. Pletka in this program.

The select committee received notification under rule 35 for Rick Weiland, a member of the staff of Senator DASCHLE, to participate in a program in Germany, sponsored by the Friedrich Naumann Foundation from May 28 to June 5, 1994.

The committee determined that no Federal statute or Senate rule would prohibit participation by Mr. Weiland in this program.

The select committee received notification under rule 35 for Kerry Tymchuk, a member of the staff of Senator DOLE, to participate in a program in China sponsored by the Chinese People's Institute of Foreign Affairs from May 27 through June 7, 1994.

The committee determined that no Federal statute or Senate rule would prohibit participation by Ms. Tymchuk in this program.

The select committee received notification under rule 35 for Senator CRAIG, his spouse and Elizabeth Criner, a member of the staff of Senator CRAIG, to participate in a program in China, sponsored by the Chinese National Association of Industry and Commerce from May 27 to June 3, 1994.

The committee determined that no Federal statute or Senate rule would prohibit participation by Senator and Mrs. Craig and Ms. Criner in this program.

The select committee received notification under rule 35 for Ian Butterfield, a member of the staff of Senator ROTH to participate in a program in Norway, sponsored by the Norwegian government from May 29 to June 2, 1994.

The committee determined that no Federal statute or Senate rule would prohibit participation by Mr. Butterfield in this program.

The select committee received notification under rule 35 for Susan Brown, a member of the staff of Senator MCCAIN, to participate in a program in Germany sponsored by the Hanns Seidel Foundation from July 2–9, 1994.

The committee determined that no Federal statute or Senate rule would prohibit participation by Ms. Brown in this program.

The select committee received notification under rule 35 for John D. Windhausen, senior counsel to the Committee on Commerce, Science, and Transportation for Senator HOLLINGS, to participate in a program in China sponsored by the Chinese People's Institute of Foreign Affairs from May 27 through June 7, 1994.

The committee determined that no Federal statute or Senate rule would prohibit participation by Mr. Windhausen in this program.

The select committee received notification under rule 35 for Kris Kolesnik, a member of the staff of Senator GRASSLEY, to participate in a program in Germany sponsored by the Konrad-Adenauer Foundation from May 28 through June 4, 1994.

The committee determined that no Federal statute or Senate rule would prohibit participation by Mr. Kolesnik in this program.•

• Mr. D'AMATO. Mr. President, I submit the following for the RECORD:

Eric Breindel: Honored tonight in New York City: The editor of an editorial page that can always be counted on to speak up fearlessly in support of what's vital to New York City; the true conscience of the city and, in his weekly column, a vigilant defender of the Jewish people from which he stems and the democratic institutions of this country in which he lives.—June 13, 1994.•

CONGRATULATING LINCOLN HIGH SCHOOL ON WINNING SECOND PLACE IN THE "WE THE PEOPLE" NATIONAL CONSTITUTIONAL COMPETITION

• Mr. PACKWOOD. Mr. President, I rise today to congratulate the students of Lincoln High School in Portland, OR, who recently finished second in the Nation in the "We the People . . . The Citizen and the Constitution" competition.

For the seventh year in a row, a team from Lincoln High has been victorious at the congressional district and State level and represented Oregon at the national competition. Lincoln is also the two time national champions, having won the national competition in 1991 and 1990. The team placed in the top ten in 1993 and 1992, 4th in 1989, and 12th in 1988. Even more impressive is the fact that each year the team has been made up of an entirely new group of students.

The program features an intensive 6-week curriculum which provides students with a fundamental understanding of the Constitution with a particular emphasis on the Bill of Rights. The students then compete by testifying on selected constitutional issues before a mock congressional committee made up of constitutional scholars, lawyers, and Government leaders.

I have had the pleasure of meeting with the students in my office over the past few years. They are incredibly well informed and sophisticated about the Constitution and the Bill of Rights. Their questions, enthusiasm, and insight show the value of this program in educating students and encouraging their interest in the Constitution and the political system.

Again, I want to congratulate the students on their accomplishment. I also want to commend Harold Hart who leads the class with fellow attorneys Chris Hardman and Chuck Sparks and Lincoln teacher David Bailey. I ask that the names of the students be entered into the RECORD:

Erica Barkost, Annie Birnie, Jayne Bleckmann, Brian Burk, Christl Denecke, Stephanie Greenman, Anna Jablonski, Anna Johnson, Jenifer Lassell, Melinda Leach, Sebald Linders, Elisa Beth Margolis, Colleen McCarthy, Halston McKiever, Aya Murase, Edward Murphy, Sara Nelson, Jennifer Neuwelt, Katherine Newbegin, Larisa Pennington, David Phillips, Molly Santana, David Sun, Sarah Teich, Angela Valdez, Kyen Waldron, and Angela York.•

AN OUTSTANDING FEDERAL EMPLOYEE

• Mr. LEVIN. Mr. President, Albert Zamberlan, Regional Director of the Department of Veterans Affairs, Central Region, is going to retire on July 1, 1994, at the end of 35 years of government service.

Mr. Zamberlan has served as our VA Regional Director since July, 1981. Prior to this appointment, he was Director of VA medical centers in Clarksburg, WV; Allen Park and Ann Arbor, MI. He also served as district director of the VA's former Medical District 14, which included VA medical centers in Ann Arbor, Allen Park, Battle Creek, and Saginaw, MI.

Throughout his career, Mr. Zamberlan has been recognized for superior performance and received numerous awards. In 1993, he received the Under Secretary's Honor Award, the highest award bestowed upon an individual in the Department of Veterans Affairs, Veterans Health Administration. In 1992, Mr. Zamberlan received the Secretary's fifth annual Equal Employment Opportunity Award. He received the Distinguished Service Award from Federally Employed Women, Inc., for his outstanding support for the advancement of women in 1987.

Mr. Zamberlan also was presented the 1984 Presidential Distinguished Executive Rank Award for outstanding leadership in the VA, the highest honor granted to a federal employee for performance. In 1983, the Association of Military Surgeons of the United States honored him with the Ray E. Brown Award, the highest healthcare executive award.

I have personally worked with Mr. Zamberlan, more fondly known as "Z," to help the administration deal more effectively with patients suffering from post traumatic stress syndrome. We have also worked together to help homeless veterans in our State.

I am proud to recognize Mr. Zamberlan's many fine contributions to veterans and the Veterans' Administration, and I wish him good health and some much deserved relaxation after a distinguished government career.•

CENTURION ATTACK SUBMARINE

• Mr. D'AMATO. Mr. President, in January, the Defense Acquisition Board [DAB] met to consider whether the *Centurion* attack submarine was ready to move from concept definition to demonstration and validation. The DAB adjourned without decision. Instead, Under Secretary of Defense Deutch has issued a memorandum that is a concise thorough summation of the cost and technical questions that still linger over the Navy's plans for the *Centurion*. Before milestone I is approved, Mr. Deutch's thoughtful concerns must be addressed.

The importance of this process cannot be overemphasized. There is deep concern in some quarters that the Navy has done little more than pay lip service to the notion of affordability in its development of the *Centurion*. The fact that the Navy wrapped *Centurion* around a reactor that was conceived years before, with goals other than affordability paramount, and that that reactor then drove the gross design characteristics of the *Centurion*, gives any thoughtful observer pause.

The Navy has repeatedly put the per unit cost of *Centurion* at $1.5 billion, but that is at a rate of 1.5 ships per year. The President's 5-year defense plan projects a *Centurion* building rate of .5 ships per year. It is not difficult to imagine *Centurion* climbing well over the $2 billion mark, a level that killed the *Seawolf*.

The point of the *Centurion* is to avoid a repeat of the *Seawolf* debacle. One way to impress affordability upon the collective mind of the Navy is by mandating a design to cost approach, as part of the DAB process, or through legislation. Colleagues have argued, however, that this will not work. The FFG–7 used a design to cost approach, and the class remains a leper within the Navy. I have been persuaded that there is a better way. Tomorrow, I will discuss that alternative strategy at some length.•

MEASURES READ THE SECOND TIME

Mr. FORD. Madam President, I ask unanimous consent that it be in order for those items currently listed under "Bills and Joint Resolutions" read the first time to be considered to have received their second reading, en bloc, and objection having been heard to further proceedings, the measures be placed on the calendar as provided under rule XIV, paragraph 2.

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

The bills considered to have been read for the second time are as follows:

S. 2122. A bill to improve the public and private financing of long-term care and to strengthen the public safety net for elderly and non-elderly disabled individuals who lack adequate protection against long-term care expenses, and for other purposes.

S. 2129. A bill to amend title 18, United States Code, to preserve personal privacy with respect to medical records and health care-related information, and for other purposes.

S. 2137. A bill to designate certain National Forest lands in the State of Montana as wilderness, to release other National Forest lands in the State of Montana for multiple use management, and for other purposes.

H.R. 2108. A bill to make improvements in the Black Lung Benefits Act.

H.R. 2153. A bill to improve access to quality health care, to reform medical malpractice liability standards, to reduce paperwork and simplify administration of health care claims, to establish safe harbors from the application of the antitrust laws for certain activities of providers of health care services, to prevent fraud and abuse in the health care delivery system, and for other purposes.

AUTHORIZING THE GREATER WASHINGTON SOAP BOX DERBY ASSOCIATION TO USE THE CAPITOL GROUNDS

Mr. FORD. Madam President, I ask unanimous consent that the Senate proceed to the immediate consideration of House Concurrent Resolution 238, authorizing the use of the Capitol grounds by the Greater Washington Soap Box Derby Association, just received from the House; that the concurrent resolution be agreed to and the motion to reconsider be laid upon the table.

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

So the concurrent resolution (H. Con. Res. 238) was agreed to.

ORDERS FOR TOMORROW

Mr. FORD. On behalf of the majority leader, I ask unanimous consent that when the Senate completes its business today, it stand in recess until 9:30 a.m., June 8; that following the prayer the Journal of the proceedings be deemed approved to date, and the time for the two leaders reserved for their use later in the day; that there be a period for morning business not to extend beyond 10 a.m., with Senators permitted to speak therein for up to 5 minutes each, with Senator FAIRCLOTH recognized to speak for up to 15 minutes; that at 10 a.m., the Senate resume consideration of S. 1587, the Federal Procurement Streamlining Act; that on Wednesday, 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. Without objection, it is so ordered.

RECESS UNTIL WEDNESDAY, JUNE 8, 1994, AT 9:30 A.M.

Mr. FORD. Madam President, if there is no further business to come before the Senate today, I now ask unanimous consent that the Senate stand in recess as previously ordered.

There being no objection, the Senate, at 6:18 p.m., recessed until Wednesday, June 8, 1994, at 9:30 a.m.