Case Number: 2016-0152-F

FOIA MARKER

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Chron File - May 1993 #1 [5]				
Staff Office-Individual:				
Defense Policy-Bell, Robert				
Original OA/ID Number:				
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NATIONAL SECURITY COUNCIL
WASHINGTON, D.C. 20506

May 7, 1993

ACTION

MEMORANDUM FOR ANTHONY LAKE

THROUGH: ROBERT G. BELL RGB

FROM: STEVEN R. JONES

SUBJECT: Letter from Representative Wynn on Defense Conversion Proposal RE: Military Personnel and Law Enforcement

Representative Wynn (D-Md) has written to the President soliciting his support for the bill he has recently introduced. His proposed legislation would assist members of the Armed Forces who are discharged or released from active duty to obtain employment with law enforcement agencies and health care providers.

The bill provides assistance similar to last year's "troops to teachers" legislation. For qualified applicants, and as appropriations permit, Wynn proposes to pay the employer the lesser of two years basic salary or $50,000. Rep. Wynn, who concedes that the cost of such legislation is "not insignificant," proposes that savings derived from defense cuts be earmarked to fund the cost.

While we should support the goal of helping exiting military members find jobs in social services, the President should not endorse this legislation. DoD is currently working to expand its "troops to teachers" program to include law enforcement and health care personnel. The NEC-led Defense Conversion Working Group has just begun to review and coordinate these programs. While the stipend provided under "troops to teachers" for teacher training and certification appears to be effective, several experts question the cost effectiveness of the $50,000 reimbursement as an incentive for hiring teachers, and to endorse it for law enforcement and health care would be premature.

The President should endorse the concept of assisting discharged military members in finding work in social services such as law enforcement and health care, but cite -- along with the Administration's overall anti-crime and health care efforts -- the ongoing DoD "Troops to Teachers/Health Care/Law Enforcement Personnel" program and NEC-led interagency efforts to find the most efficient way to achieve this goal.

Concurrences by: Jeremy Rosner, David Lane (NEC), in draft.
Dorothy Robyn (NEC) in draft.

RECOMMENDATION

That you send a joint memo with Bob Rubin and Howard Paster to the President recommending his signature at Tab A.

Attachments
Tab I Memorandum to the President
Tab A Letter to Representative Wynn
Tab B Incoming Correspondence

THE WHITE HOUSE

WASHINGTON

ACTION

MEMORANDUM FOR THE PRESIDENT

FROM: ANTHONY LAKE
HOWARD PASTER
ROBERT RUBIN

SUBJECT: Letter from Representative Wynn on Defense Conversion Proposal RE: Military Personnel and Law Enforcement

Purpose

To respond to Representative Wynn (D-Md) who wants your support for his defense conversion bill. The intent of the bill is to help exiting military personnel find jobs in law enforcement and health care by paying up to $50,000 to the employers.

Background

The proposed bill is in some ways similar to last year's "troops to teachers" legislation. The reimbursement is expensive and would be funded from cuts to the defense budget. You should reiterate your strong support for helping discharged military members find work in teaching, law enforcement and health care, but not support this specific bill.

Along with the Administration's broader anti-crime and health care initiatives, you should cite the ongoing DoD "Troops to Teachers/Health Care/Law Enforcement Personnel" program and the NEC-led interagency efforts now underway to find the most effective way to develop and coordinate these programs.

RECOMMENDATION

That you sign the letter at Tab A.

Attachments
Tab A Letter to Representative Wynn
Tab B Incoming Correspondence

cc: Vice President
Chief of Staff

THE WHITE HOUSE

WASHINGTON

Dear Albert:

Thank you for your letter supporting our efforts to help personnel leaving the Armed Forces find jobs in critical areas such as law enforcement and health care and also for the draft legislation you enclosed.

My Administration will continue to work diligently to attack crime and provide appropriate health care for all Americans. As you know, my defense reinvestment and conversion program is looking at ways to help people leaving the Armed Forces to find jobs in teaching, law enforcement, health care and similar services.

I feel fortunate to have been able to build on the strong foundation provided by Congress last year in this area. The Department of Defense is currently developing with other agencies its "Troops to Teachers/Health Care/Law Enforcement Personnel." To assist this effort, the National Economic Council will be leading an interagency group to review how this and similar programs can better match our defense transition goals with our law enforcement and health care needs.

Thank you for your support. I look forward to working with you to meet our anti-crime and health care goals.

Sincerely,

The Honorable Albert R. Wynn
House of Representatives
Washington, D.C. 20515

015340
2992

ALBERT RUSSELL WYNN
4TH DISTRICT, MARYLAND

93 APR 27 P2:26

Congress of the United States
House of Representatives
Washington, DC 20515-2004

April 21, 1993

President Bill Clinton
The White House
1600 Pennsylvania Avenue, N.W.
Washington, D.C. 20050

Dear President Clinton:

I would like to begin by commending you on your efforts to attack crime by putting 100,000 police officers on the streets. It is a bold approach which will have the dual benefit of creating new jobs and making our communities safer.

A recent Washington Post article indicated that your economic stimulus package includes $200 million in new Justice Department grants to re-hire laid off police officers. These grants, combined with local funding and future increases, will undoubtedly put thousands of needed law enforcement officers in our communities. Notwithstanding, additional programs will be necessary in order to reach your desired goals.

On March 4,1993, I introduced H.R. 1245, the Defense Conversion Opportunities Act of 1993. The purpose of the bill is to assist members of the Armed Forces who are discharged or released from active duty to obtain employment with law enforcement agencies and health care providers. The bill would provide funding to local agencies that hire these highly skilled professionals with experience in these two areas. In addition to helping military personnel find good jobs, the bill will also have the effect of increasing the number of health care professionals and police officers.

While the cost of such legislation is not insignificant, the return on the investment can be realized within your first term as President. A portion of the savings derived from defense cuts can be earmarked to fund the cost. A copy of the bill is enclosed for your review.

I certainly hope that you will consider H.R. 1245 favorably, and include it in your overall defense conversion strategy. Moreover, I look forward to working with you and the Democratic leadership to make your law enforcement and health reform goals a reality. Please do not hesitate to contact me if I can assist you on any matter.

Sincerely,

Albert R. Wynn
Member of Congress

ARW:smc

Enclosure

cc: Les Aspin, Secretary of Defense

103D CONGRESS
1ST SESSION

H. R. 1245

IN THE HOUSE OF REPRESENTATIVES

Mr. WYNN introduced the following bill; which was referred to the Committee on Armed Services

A BILL

To amend title 10, United States Code, to assist members of the Armed Forces who are discharged or released from active duty to obtain employment with law enforcement agencies and health care providers.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. DEPARTMENT OF DEFENSE EFFORTS TO PLACE SEPARATED MEMBERS OF THE ARMED FORCES IN EMPLOYMENT POSITIONS WITH LAW ENFORCEMENT AGENCIES AND HEALTH CARE PROVIDERS.

(a) PLACEMENT PROGRAM WITH LAW ENFORCEMENT AGENCIES.—Chapter 58 of title 10, United States Code, is amended by adding at the end the following new section:

"§ 1152. Assistance to separated members to obtain employment with law enforcement agencies

"(a) PLACEMENT PROGRAM.—The Secretary of Defense shall establish a program to assist eligible members of the Armed Forces to obtain employment by State and local law enforcement agencies upon their discharge or release from active duty.

"(b) ELIGIBLE MEMBERS.—Except as provided in paragraph (2), a member of the Armed Forces may apply to participate in the program established under subsection (a) if the member—

"(A) is selected for involuntary separation, is approved for separation under section 1174a or 1175 of this title, or is given early retirement under section 4403 of the National Defense Authorization

Act for Fiscal Year 1993 during the four-year period beginning on October 1, 1993;

"(B) has a military occupational specialty, training, or experience related to law enforcement, such as service as a member of the military police; and

"(C) satisfies such other criteria for selection as the Secretary of Defense may prescribe.

"(2) A member who is discharged or released from service under other than honorable conditions shall not be eligible to participate in the program.

"(c) SELECTION OF PARTICIPANTS.—(1) The Secretary of Defense shall select members to participate in the program established under subsection (a) on the basis of applications submitted to the Secretary before the date of the discharge or release of the members from active duty. An application shall be in such form and contain such information as the Secretary may require.

"(2) The Secretary may not select a member to participate in the program unless the Secretary has sufficient appropriations for the placement program available at the time of the selection to satisfy the obligations to be incurred by the United States under subsections (d) with respect to that member.

"(d) GRANTS TO FACILITATE EMPLOYMENT.—(1) The Secretary of Defense shall enter into agreements with State and local law enforcement agencies to assist eligible members selected under subsection (c) to obtain suitable employment with these agencies. Under the agreement, the law enforcement agency shall agree to employ a separated member selected for the program on a full-time basis for at least a two-year period.

"(2) Under an agreement referred to in paragraph (1), the Secretary shall agree to pay to the law enforcement agency involved an amount equal to the lesser of—

"(A) the basic salary to be paid to the separated member during the required two-year period of employment; and

"(B) $50,000.

"(3) Payments required under paragraph (2) may be made by the Secretary in such installments as the Secretary may determine.

"(4) If a separated member who is placed under this program leaves the employment of the law enforcement agency before the end of the two years of required employment service, the agency shall reimburse the Secretary in an amount that bears the same ratio to the total amount already paid under the agreement as the unserved portion bears to the two years of required service.

"(5) The Secretary may not make a grant under this subsection to a law enforcement agency if the Secretary determines that the law enforcement agency terminated the employment of another employee in order to fill the vacancy so created with a separated member under this program.".

(b) PLACEMENT PROGRAM WITH HEALTH CARE PROVIDERS.—Chapter 58 of title 10, United States Code, is amended by adding after section 1152, as added by subsection (a), the following new section:

"§ 1153. Assistance to separated members to obtain employment with health care providers

"(a) PLACEMENT PROGRAM.—The Secretary of Defense shall establish a program to assist eligible members of the armed forces to obtain employment by health care providers upon their discharge or release from active duty.

"(b) ELIGIBLE MEMBERS.—(1) Except as provided in paragraph (2), a member shall be eligible for selection by the Secretary of Defense to participate in the program established under subsection (a) if the member—

"(A) is selected for involuntary separation, is approved for separation under section 1174a or 1175 of this title, or is given early retirement under section 4403 of the National Defense Authorization

Act for Fiscal Year 1993 during the four-year period beginning on October 1, 1993;

"(B) has received an associate degree, baccalaureate, or advanced degree from an accredited institution of higher education or a junior or community college;

"(C) has a military occupational specialty, training, or experience related to health care or is likely to be able to obtain such training in a short period of time, as determined by the Secretary; and

"(D) satisfies such other criteria for selection as the Secretary may prescribe.

"(2) A member who is discharged or released from service under other than honorable conditions shall not be eligible to participate in the program.

"(c) SELECTION OF PARTICIPANTS.—(1) The Secretary of Defense shall select members to participate in the program established under subsection (a) on the basis of applications submitted to the Secretary before the date of the discharge or release of the members from active duty. An application shall be in such form and contain such information as the Secretary may require.

"(2) The Secretary may not select a member to participate in the program unless the Secretary has sufficient appropriations for the placement program available at the time of the selection to satisfy the obligations to be incurred by the United States under subsections (d) with respect to that member.

"(d) GRANTS TO FACILITATE EMPLOYMENT.—(1) The Secretary of Defense shall enter into an agreement with a health care provider to assist eligible members selected under subsection (c) to obtain suitable employment with the health care provider. Under the agreement, the provider shall agree to employ a separated member selected for the program on a full-time basis for at least a two-year period.

"(2) Under an agreement referred to in paragraph (1), the Secretary shall agree to pay to the health care provider involved an amount equal to the lesser of—

"(A) the basic salary to be paid to the separated member during the required two-year period of employment; and

"(B) $50,000.

"(3) Payments required under paragraph (2) may be made by the Secretary in such installments as the Secretary may determine.

"(4) If a separated member who is placed under this program leaves the employment of the health care provider before the end of the two years of required employment service, the provider shall reimburse the Secretary in an amount that bears the same ratio to the total amount already paid under the agreement as the unserved portion bears to the two years of required service.

"(5) The Secretary may not make a grant under this subsection to a health care provider if the Secretary determines that the provider terminated the employment of another employee in order to fill the vacancy so created with a separated member under this program.".

(c) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by adding at the end the following new items:

"1152. Assistance to separated members to obtain employment with law enforcement agencies.
"1153. Assistance to separated members to obtain employment with health care providers.".

NATIONAL SECURITY COUNCIL
WASHINGTON, D.C. 20506

May 7, 1993

ACTION

MEMORANDUM FOR WILLIAM H. ITOH

THROUGH: ROBERT G. BELL RGB

FROM: RICHARD HOOKER RDH

SUBJECT: HR 1040 Reserve Officer Personnel Management Act

We have reviewed and recommend concurrence with the draft Reserve Officer Personnel Management Act (HR 104). This legislation has minimal budgetary impact and is intended to align reserve officer personnel management practices with procedures in use for the active forces. All other addressees have concurred and OMB intends to clear the proposal this weekend.

Concurrence by: Keith Hahn KH

RECOMMENDATION

That you sign the memo of concurrence at Tab I

Attachments
Tab I Memo of Concurrence
Tab II Incoming Correspondence

NATIONAL SECURITY COUNCIL
WASHINGTON. D.C. 20506

MEMORANDUM FOR CHRIS MUSTAIN

FROM: WILLIAM H. ITOH

SUBJECT: Draft Reserve Officer Personnel Management Act

The National Security Council staff has reviewed and concurs with the proposed Reserve Officer Personnel Act (HR 104).

3164

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503

URGENT

May 6, 1993

LEGISLATIVE REFERRAL MEMORANDUM

LRM #I-399

TO: Legislative Liaison Officer -

DEFENSE - Samuel T. Brick, Jr. - (703)697-1305 - 325
TRANSPORTATION - Tom Herlihy - (202)366-4687 - 226
NSC - William H. Itoh - (202)395-3723 - 249
p. 200 of bill-HHS - Frances White - (202)690-7760 - 328
p. 244 of bill-TREASURY - Richard S. Carro - (202)622-1146 - 228
p. 210 of bill-VA - Robert Coy - (202)535-8113 - 229

FROM: JANET R. FORSGREN (for) C. Mustain (for)
Assistant Director for Legislative Reference

OMB CONTACT: Chris MUSTAIN (395-3923)
Secretary's line (for simple responses): 395-7362

SUBJECT: Proposed Statement of Administration Policy
RE: HR 1040, Reserve Officer Personnel
Management Act

DEADLINE: COB TODAY May 6, 1993

COMMENTS: The House is scheduled to consider HR 1040 on the floor next week.

OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President, in accordance with OMB Circular A-19.

Please advise us if this item will affect direct spending or receipts for purposes of the the "Pay-As-You-Go" provisions of Title XIII of the Omnibus Budget Reconciliation Act of 1990.

CC:
Tom Stanners
Wendell Waites
Roger Adkins
Chris Bertram
Art Stigile
Todd Grams
Justin Kopca
Peggy Young
Barry Clendenin
Jeff Blend
Lorraine Miller
Delphine Motley
Janet Forsgren
Bernie Martin

DRAFT

May 6, 1993
(House)

H.R. 1040 - Reserve Officer Personnel Management Act
(Montgomery (D) AL)

The Administration fully supports H.R. 1040. The bill would clarify and consolidate current law relating to the appointment, promotion, and separation of commissioned officers of the reserve components of the Armed Forces.

Pay-As-You-Go Scoring

H.R. 1040 would increase outlays; therefore, it is subject to the pay-as-you-go requirement of the Omnibus Budget Reconciliation Act of 1990 (OBRA). No offsets to the increased outlays are provided in the bill. Therefore, if this bill were enacted, its deficit effects would be included in a look back pay-as-you-go sequester report at the end of the congressional session and could contribute to a sequester of mandatory programs.

OMB's preliminary scoring estimates for this bill are presented in the table below. Final scoring of this legislation may deviate from these estimates. If H.R. 1040 were enacted, final OMB scoring estimates would be published five days after enactment, as required by OBRA. The cumulative effects of all enacted legislation on direct spending will be reported to Congress monthly.

Estimates for Pay-As-You-Go
($ in millions)

	1994	1995	1996	1997	1998	1994-1998
Outlays						

* * * * * * *

NATIONAL SECURITY COUNCIL
WASHINGTON, D.C. 20506

May 10, 1993

ACTION

MEMORANDUM FOR ANTHONY LAKE

THROUGH: ROBERT BELL RGB

FROM: KEITH HAHN KH

SUBJECT: Invitation to the Secretary of State to Make Welcoming Remarks to the National Security Telecommunications Advisory Committee (NSTAC) Meeting

The National Security Telecommunications Advisory Committee (NSTAC) will hold its Business Session on May 27 at the State Department. The Manager of the National Communications System, LGEN Short, would like to invite Secretary Christopher to give a few welcoming remarks. State Department scheduling personnel have requested your acknowledgement that this group warrants the senior-level recognition that Secretary Christopher's remarks would confer.

The NSTAC, currently composed of 26 senior corporate leaders (membership at Tab II), advises the President, and the Secretary of Defense, in his capacity as Executive Agent for the National Communications System, on national security telecommunications policy. They provide recommendations and support for enhancing the survivability, reliability and security of the Nation's commercial telecommunications networks. These networks satisfy 95 percent of the Federal government's domestic communications requirements.

RECOMMENDATION

That you sign the letter to Secretary Christopher at Tab I.

Attachments
Tab I Letter to Secretary of State Christopher
Tab A NSTAC Membership

THE WHITE HOUSE

WASHINGTON

MEMORANDUM FOR THE HONORABLE WARREN CHRISTOPHER

FROM: ANTHONY LAKE

SUBJECT: Invitation to Address the President's National Security Telecommunications Advisory Committee (NSTAC) Meeting

The President's National Security Telecommunications Advisory Committee (NSTAC) will hold its Business Session at the State Department on the morning of May 27. Over its eleven-year history, the NSTAC has been a valuable source of advice to the President and the Secretary of Defense and has made significant contributions in identifying enhancements to our national security telecommunications capabilities.

I understand that Lieutenant General Short, Manager of the National Communications System and NSTAC Designated Federal Official, will invite you to open the Business Session with some brief welcoming remarks. Given the distinguished NSTAC membership (at Tab A) -- whose members' corporations account for 8% of the U.S. Gross Domestic Product and employ 2.8 million people -- and the importance of its work, I fully support General Short's request. If your schedule allows, your opening remarks would be greatly appreciated.

Attachments
Tab A NSTAC Membership

The President's
National Security Telecommunications Advisory Committee (NSTAC)
Members

Mr. Lester M. Alberthal, Jr.	Electronic Data Systems
Mr. Robert E. Allen	American Telephone and Telegraph Company
Mr. C. Michael Armstrong	Hughes Aircraft Company
Mr. Norman R. Augustine	Martin Marietta Corporation
Mr. Stanley C. Beckelman	The Boeing Company
Mr. Kent M. Black	Rockwell International Corporation
Mr. Robert C. Brown, III	United State Telephone Association
Mr. Bruce L. Crockett	Communications Satellite Corporation
Mr. Gerald W. Ebker	International Business Machines Corporation
Mr. D. Travis Engen	ITT Corporation
Mr. William T. Esrey	Sprint Corporation
Mr. John T. Hartley	Harris Corporation
Dr. George H. Heilmeier	Bell Communications Research, Incorporated
Mr. William J. Hilsman	InterDigital Communications Corporation
Mr. Royce J. Holland	Metropolitan Fiber Systems Communications Company
Mr. William R. Hoover	Computer Sciences Corporation
Mr. Charles R. Lee	GTE Corporation
Mr. Craig O. McCaw	McCaw Cellular Communications, Incorporated
Mr. Richard D. McCormick	U S West, Incorporated
Mr. John N. McMahon	Lockheed Corporation
Mr. John F. Mitchell	Motorola, Incorporated
Mr. Bert C. Roberts, Jr.	MCI Telecommunications Corporation
Mr. Charles E. Robinson	Pacific Telecom, Incorporated
Dr. Paul G. Stern	Northern Telecom, Incorporated
Mr. Roy A. Wilkens	Williams Telecommunications Group, Incorporated
Mr. Albert F. Zettlemoyer	Unisys Corporation

NATIONAL SECURITY COUNCIL
WASHINGTON, D.C. 20506

May 10, 1993

ACTION

MEMORANDUM FOR WILLIAM H. ITOH

THROUGH: ROBERT G. BELL RGB

FROM: RICHARD HOOKER RH

SUBJECT: Defense Draft Bill, DOD Military Activities Authorization Act (DOD 103-001)

We have reviewed and recommend that you concur with DOD 103-001, the draft Defense Military Activities Authorization Act.

This proposed legislation is a revised version of section 709 of the draft Defense Authorization Act. We nonconcurred with section 709 because it permitted direct deposit of funds by foreign governments into Foreign Military Sales (FMS) accounts managed by Military Assistance/Advisory Groups (MAAGs) in Japan, Kuwait and Saudi Arabia without normal DOD oversight and accountability as provided in law. DOD 103-001 corrects this by requiring that these funds be deposited directly into DOD appropriations accounts under the control of the Department of Defense Comptroller.

These deposits are to be used only for military construction, compensation for foreign national employees, and local supplies and services.

Concurrence by: Keith Hahn KH

RECOMMENDATION

That you sign the memo of concurrence at Tab I

Attachments
Tab I Memo of Concurrence
Tab II Incoming Correspondence

NATIONAL SECURITY COUNCIL
WASHINGTON, D.C. 20506

MEMORANDUM FOR RONALD K. PETERSON

FROM: WILLIAM H. ITOH

SUBJECT: Draft Defense Military Activities Authorization Act (DOD 103-001)

The National Security Council staff concurs with DOD 103-001, the draft Defense Military Activities Authorization Act.

3162

SPECIAL

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503

May 6, 1993

LEGISLATIVE REFERRAL MEMORANDUM

LRM #D-199
DRAFT #12

TO: Legislative Liaison Officer -

NSC - William H. Itoh - (202)395-3723 - 249
STATE - Bill Keppler - (202)647-2137 - 225
TREASURY - Richard S. Carro - (202)622-1146 - 228

FROM: RONALD K. PETERSON (for) Ronald K. Peterson
Assistant Director for Legislative Reference

OMB CONTACT: MIKE GOAD (395-7301)
Secretary's line (for simple responses): 395-6194

SUBJECT: DEFENSE Draft Bill DOD Military Activities Authorization Act (16) (DOD 103-001)

DEADLINE: TUESDAY, May 11, 1993

COMMENTS: The Department of Defense has revised the bill language for section 709 of the proposed draft bill (attached). This provision of the draft bill was originally circulated under cover of LRM #D-34 dated February 19, 1993. Please review and provide comments by the deadline noted above. If you do not respond by the deadline, we may assume that your agency has no comment.

OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President, in accordance with OMB Circular A-19.

Please advise us if this item will affect direct spending or receipts for purposes of the the "Pay-As-You-Go" provisions of Title XIII of the Omnibus Budget Reconciliation Act of 1990.

CC:
P. Vickers
T. Stanners
K. MacIntyre
B. Thierwechter
L. Zuza

LRM #D-199

RESPONSE TO LEGISLATIVE REFERRAL MEMORANDUM

If your response to this request for views is simple (e.g., concur/no comment) we prefer that you respond by faxing us this response sheet. If the response is simple and you prefer to call, please call the branch-wide line shown below (NOT the analyst's line) to leave a message with a secretary.

You may also respond by (1) calling the analyst/attorney's direct line (you will be connected to voice mail if the analyst does not answer); (2) sending us a memo or letter; or (3) if you are an OASIS user in the Executive Office of the President, sending an E-mail message. Please include the LRM number shown above, and the subject shown below.

TO: MIKE GOAD
Office of Management and Budget
Fax Number: (202) 395-5691
Analyst/Attorney's Direct Number: (202) 395-7301
Branch-Wide Line (to reach secretary): (202) 395-6194

FROM: ______________________ (Date)

______________________ (Name)

______________________ (Agency)

______________________ (Telephone)

SUBJECT: DEFENSE Draft Bill DOD Military Activities Authorization Act (16) (DOD 103-001)

The following is the response of our agency to your request for views on the above-captioned subject:

_______ Concur

_______ No objection

_______ No comment

_______ See proposed edits on pages ______________

_______ Other: ______________________

_______ FAX RETURN of _____ pages, attached to this response sheet

SEC. 709. BURDEN SHARING CONTRIBUTIONS BY JAPAN, KUWAIT, AND THE REPUBLIC OF KOREA

(a) In General.--Subchapter II of Chapter 138 of title 10, United States Code, is amended by adding at the end the following new section:

"§ 2350j. Burden sharing contributions

"(a) AUTHORITY TO ACCEPT CONTRIBUTIONS.--Notwithstanding section 1306 of title 31, United States Code, the Secretary of Defense may accept cash contributions from Japan, Kuwait, and the Republic of Korea for the purposes specified in subsection (c).

"(b) CREDITS.-Contributions accepted under subsection (a) shall be credited to appropriations of the Department of Defense. The contributions so credited shall be merged with the appropriations and funds to which they are credited.

"(c) AVAILABILITY OF CONTRIBUTIONS.-Contributions accepted under subsection (a) shall be available only for payment of the following costs:

"(1) Compensation for local national employees.

"(2) Military construction projects.

"(3) Supplies, services, and incidental personnel costs.

"(d) AUTHORIZATION OF MILITARY CONSTRUCTION.--Contributions credited under subsection (b) to an appropriation account ot the Department of Defense may be used-

"(1) by the Secretary of Defense to carry out a military construction project that is consistent with the purposes for which the contribution was made and is not otherwise authorized by law; or

"(2) by the Secretary of a Military Department, with the approval of the Secretary of Defense, to carry out such a project.

"(e) NOTICE AND WAIT REQUIREMENTS.-- (1) When a decision is made to carry out a military construction project under subsection (d), the Secretary of Defense shall submit a report to the congressional defense committees containing-

"(A) an explanation of the need for the project;

"(B) the then current estimate of the cost of the project; and

"(C) a justification for carrying out the project under that subsection.

"(2) The Secretary of Defense or the Secretary of a military department may not commence a military construction project under subsection (d) until the end of the 21 day period beginning on the date on which the Secretary of Defense submits the report under paragraph (1) regarding the project."

(b) CLERICAL AMENDMENT.--The table of sections at the beginning of subchapter II of such chapter 138 is amended by adding at the end the following new item:

"2350j. Burden sharing contributions.".

(c) REPORTING REQUIREMENT.--Not later than 30 days after the end of each quarter of fiscal year 1994, the Secretary of Defense shall submit to the congressional defense committees a report specifying separately for Japan, Kuwait, and the Republic of Korea--

(1) the amount of the contributions accepted by the Secretary during the preceding quarter under section 2350j of title 10, United States Code, and the purposes for which the contributions were made; and

(2) the amount of the contributions expended by the Secretary during the preceding quarter and the purposes for which the contributions were expended.

3298

NATIONAL SECURITY COUNCIL
WASHINGTON. D.C. 20506

May 11, 1993

ACTION

MEMORANDUM FOR SAMUEL R. BERGER

THROUGH: ROBERT BELL RGB

FROM: KEITH HAHN KH

SUBJECT: Maritime Revitalization Program

In a phone call to Bob Rubin on Saturday, Secretary of Transportation Pena asked that an NEC Deputies meeting be convened to consider the proposed DoT Maritime Revitalization Program. This meeting will be held at 1:30 p.m. today in Room 324, OEOB. An NEC Principals meeting is tentatively scheduled at the same time and place for Wednesday.

Secretary Pena wants to take immediate legislative action on the proposed DoT program (outlined on pages 4 and 9, Tab I) to avoid U.S. shipping companies shifting their flags to another country and having replacement ships built at overseas yards. While not mentioned in the working group discussions, the reason Secretary Pena is pressing for this early NEC meeting is probably the recent announcement by American President Lines (APL) that it is negotiating with German and Korean shipbuilders to build six containerships similar to the five built for APL in Germany in the late 1980s with the help of significant subsidies from the German Government. APL and SEALAND have also been threatening for over a year to shift their flags to another country.

From a national security perspective, the primary concern is the issue addressed in the first section of Tab I dealing with Carriers and U.S. Seafarers. DoD has delayed providing the working group with an estimate of national security sealift requirements until the Bottom-Up Review is complete and they have a better understanding of the force structure that will need to be supported. Last year's analysis of U.S. sealift requirements was based on the Base Force and the requirement to respond to two simultaneous major regional contingencies without allies.

In the section dealing with Carriers, the DoT proposal with the largest cost associated is the Operating Differential Subsidy Program. At Tab II, John Deutch has registered his strong objection to drawing on DoD funds for this program. In last year's analysis, DoD identified a requirement for approximately

23 ships. Using this number, DoT estimated that about 70 ships would be needed to meet U.S. national security requirements (based on the premise that only one third of the ships would be immediately available to be loaded up at U.S. ports at any one time). At $2.5M/year/ship, DoT would have DoD provide $175M/year for this program. With this much money at stake, DoD argues that it would like to consider other options for providing the necessary sealift (e.g., build and lease programs).

The Operating Differential Subsidy Program is not the only part of the proposal that has national security ramifications. It is, however, the key component of DoT's overall program. DoT has leaned heavily on the national security requirements for a domestic flag fleet because other arguments (preserving jobs and promoting exports) have not withstood interagency working group scrutiny.

Copies provided

Concurrences by: Bob Kyle and Steve Jones

RECOMMENDATION

That you support the option to delay any legislative proposal until the end of the summer (for reasons outlined on page 6 of Tab I). The DoD Bottom-Up Review, due out in July, hopefully will provide a clearer picture of the national security sealift requirements.

Attachments
Tab I Background Memo
Tab II Letter from John Deutch, April 28, 1993

BACKGROUND MEMO --- PRELIMINARY DRAFT --- May 8, 1993

The DOT Maritime Revitalization Program is designed to provide a comprehensive overhaul of maritime policies affecting carriers (ship operators) and seafarers, shipyards, and shippers. Although many of the proposals affect all of the groups, they are presented in separate sections below.

1. CARRIERS and U.S. SEAFARERS

Background

The U.S.-owned oceangoing fleet has declined steadily since the end of World War II. Between 1970 and 1992 alone, the U.S.-owned fleet fell from x vessels to about y vessels.

The U.S.-flag fleet has declined even more rapidly than has the U.S.-owned fleet. Between 1970 and 1992, the U.S.-flag fleet shrunk from 18 major operators employing 430 vessels to six major operators with 130 vessels, while the number of active seafarers declined from about xx,000 to nearly 27,000. About 40 percent the U.S.-owned fleet now flies under the U.S. flag.

A significant portion of the decline in ships and jobs came about because of increases in productivity. Between 1970 and 1990, the total tonnage carried about U.S.-flag ships rose from 11.8 million to 15.9 million. Despite the productivity increase, the U.S.-flag share of U.S. foreign trade fell from 23.5 percent to 18.6 percent.

The U.S. fleet can be roughly divided into two categories of ships--liners and bulkers. Liner ships are principally those designed to carry goods in containers. Bulkers usually carry loose cargo such as grain, ores, and liquids.

The federal government now subsidizes both types of carriers through a variety of programs, including:

1) *Operating Differential Subsidies.* Under the ODS program, the federal government entered 20 year contracts with U.S.-flag operators. These contracts provided that the federal government would pay the difference between wages on U.S.-flag ships and wages on the [highest paid?] foreign flag ship; in some cases, the government also undertook to pay the differential on other costs such as maintenance and repair. ODS contracts now cover 54 liner ships and 29 bulk ships. ODS payments in 1993 are expected to total $244 million, for an average per ship subsidy of just over $3 million.

   To qualify for ODS payments, vessels must meet a number of restrictions. ODS vessels must:

   - be U.S.-built, U.S.-flag, and at least 51 percent owned by U.S. citizens.
   - provide service on "essential trade routes".

- o receive approval from the Maritime Administration before altering trade routes.
- o not affiliate with foreign-flag "feeder" service.

2) *Ocean Freight Differential (cargo preference) program.* Cargo preference laws require certain federal programs to ship at least 50 percent of their cargo on U.S.-flag ships. In 1993, cargo preference requirements will increase government shipping costs by about $590 million. These costs will be borne by the Depratments of Defense ($x million), Agriculture ($x million), Transportation ($x million), State ($x million), and Agency for International Development ($x million).

Cargo preference subsidies provide about 10 percent of U.S.-flag liner revenues, and about x percent of U.S.-flag bulker revenues.

3) *Capital Construction Funds (CCFs).* Owners of U.S.-flag, U.S.-built ships may shelter income by placing it in a CCF. Taxes on both the income placed in a CCF and the interest earned by the CCF are defered until the CCF balances are withdrawn to purchase a ship. CCF balances are now approximately $x billion.

4) *Title XI.* Under this program, the federal government guarantees private loans made to the purchasers of U.S.-built ships. No loans have been guaranteed under this program since xxxx. As of March 31, 1993, the government's outstanding contingent liability under this program stood at $x.y billion.

5) *Jones Act.* Like most other seafaring nations, the U.S. provides cabotage for its ship operators--all domestic waterborne trade must be carried on U.S.-flag, U.S.-built ships. The Jones Act fleet accounts for more than 40 percent of the privately-owned oceangoing U.S.-flag fleet. Jones Act restrictions imposed costs on the U.S. economy estimated at $x billion per year.

6) *The Shipping Act of 1984.* The Shipping Act allows participation by U.S. carriers in international shipping cartels, known as Conferences. The effect of the Act on shipping prices is a matter of dispute. The Department of Justice estimates that the Act raises shipping prices between 10 and 15 percent, providing U.S.-flag carriers with a subsidy valued at $x million per year. The Federal Maritime Commission disputes these results, however, and asserts that Conferences have little effect on long-term shipping prices.

Rationale for Action

Subsidies for the U.S.-flag fleet have long been justified on the grounds that they meet a defense need and support the U.S. economy. Only the defense rationale bears up under analysis.

Defense. The U.S. military relies on both government-owned and privately-owned vessels to meet its emergency shipping needs. These ships need not be U.S.-flag. The government has wide powers to requisition or purchase any ship owned by U.S. cititzens when "the security of the national defense makes it advisable."

In addition to these broad legal powers, the U.S. subsidizes U.S.-flag ships in order to secure contingent sealift capacity. Using subsidies provides a number of advantages over a simple reliance on the legal power to requisition. First, U.S.-flag ships provide the added security of being crewed by U.S. citizens. Second, subsidies can create a contractual obligation that allows the government to avoid the continuing legal debate on the meaning of "owned by the citizens of the United States."

Preserving Jobs. Ships receiving ODS payments now employ approximately 16,000 people. New subsidies would ensure the continuation of these seafaring jobs. Barring any new subsidies, these ships would likely switch to foreign crews after 1997.

Government subsidies to protect an industry will increase social welfare if an industry is characterized by "spillovers," so that activity in the industry improves the performance of the economy as a whole. In such cases, the cost of subsidies may be offset by the spillover benefits that accrue from higher industry output. At this point, however, the Group has found no evidence of spillovers in the carrier industry.

A case also can be made for providing an industry with transitional assistance. But subsidies for carriers are designed to preserve the status quo: the primary rationale for these subsidies is that higher wages and better working conditions put U.S.-flag carriers at a continuing competitive disadvantage. To date, the Group has not been able to construct a scenario in which the industry would not reflag at the end of any proposed program.

DELETE

[Finally, some argue that subsidies should be provided to certain "high-wage" industries. In those industries where the wage differential cannot be explained by the skill levels of the workforce, and where the wage differential persists both over time and across countries, offering subsidies may provide benefits that exceed their costs. Not all high-wage industries, however, should be subsidized. If wages are high because of monopoly power or some other welfare reducing characteristic of the industry, then the benefits of subsidizing the industry will not be worth the cost.]

[Wages are relatively high on U.S.-flag carriers, but not on foreign flag carriers. U.S.-flag wages are high in part because of existing U.S. subsidies (carriers receiving ODS payments have few incentives to control labor costs). To the extent that industry wages simply reflect government subsidies, further payments to carriers will transfer money from taxpayers generally to the carrier industry and its employees, with no benefits to the economy as a whole.]

Given these findings, if carriers were subsidized simply to "preserve jobs", the Working Group would be unable to identify the grounds by which the Administration could refuse to subsidize every other industry that suffers job losses.

Promoting U.S. exports. Some have argued that a U.S.-flag fleet promotes U.S. exports, on the ground that the absence of a U.S.-flag fleet would allow other countries to price discriminate against U.S. exporters. Given the number of players in world shipping markets, however, the emergence of an effective cartel is highly unlikely. Finally, while U.S. shipper groups have stated their desire to work with a fleet that is U.S.-owned, they have expressed little concern about whether that fleet is also U.S.-flagged.

Level the Playing Field. Many of our major trading partners provide direct subsidies to their commercial carriers. Extending similar subsidies to our own carriers would allow U.S.-flag ships a greater chance in world markets. Are the benefits of remaining competitive in U.S. foreign trade shipping worth their cost? The answer must be found in the rationales discussed above: securing the defense, preserving jobs, and promoting exports.

OPTIONS

The Group has considered two options. Under the first option, the Administration would immediately submit to Congress the DOT's "Martime Revitalization Program," a comprehensive package of subsidies and statuatory changes designed to meet U.S. defense needs for contingent sealift capacity and support U.S. maritime industries. Under the second option, the Administration would delay submission of legislation until the end of the summer, by which time the Administration will have completed its review of defense needs and other issues affecting various segments of the maritime industry.

(1) DOT's "Maritime Revitalization Program" for Carriers

DOT would like the Administration to move forward with legislation to support various segments of the maritime industry. DOT believes that immediate action is needed if the U.S. is to retain a U.S.-flag fleet beyond 1997.

In each of the next ten years, the DOT program would subsidize 90 liner ships and 20 ship-years of bulk operations. DOT believes that this is the number of ships needed to meet defense requirements for sealift capacity. The DOT program would subsidize carriers in a variety of forms, including direct per ship payments, loan guarantees, new tax preferences, and revised cargo preference provisions.

1) *Offer liners new contracts* totalling \$2.1 billion over ten years. The contracts would provide annual per ship payments of \$2.5 million during the first 4 years, and \$2.0 million during the last 6 years. Contracts would cover 90 liner ships. By providing a flat per ship

payment rather than basing the subsidy on the difference in costs between U.S.-flag and foreign-flag operations, the new DOT program would create incentives for carriers to become more efficient.

Existing ODS restrictions would be relaxed:
- o operators could receive subsidies on two new foreign-built ships for every one new U.S.-built ship in the program.
- o restrictions on trade routes would be eliminated; restrictions on foreign-flag feeders would be relaxed.

While other restrictions would be added:
- o U.S.-built vessels could be no more than 15 years old; foreign built ships could be no more than 5 years old.

2) *Offer bulkers new contracts* totalling $400 million over ten years. In each year, the contracts would support 20 ship-years of bulk operations. The contracts would have the same features as the liner contracts except that only newly constructed vessels would be eligible.

3) *Provide New Funds for Loan Guarantees*
- o Fund Title XI loan guarantees at $75 million in FY94 and $50 in FY95 and FY96. Guarantees would be extended to new U.S.-built ships, both liners and (in an expansion of current law) bulkers.

4) *Provide new tax preferences.* Three tax provisions would be liberalized, one provision would be tightened. Treasury estimates that, on balance, the tax changes would lose at least $x million per year. The changes include:
- o allowing the use CCF funds for lease payments.
- o repealing CCF adjustment under the AMT.
- o changing depreciation rules to provide four-year cost recovery for vessels.
- o taxing accumulated CCF earnings.

5) *Alter Cargo Preference Programs*
- o Issue an executive order directing all federal agencies to adhere to the "letter and spirit" of cargo preference laws. While the purpose of such an order would be to include a greater amount of cargo under preference provisions, the Group has not yet receive any information about how this order would change the cost of cargo preference programs for different agencies.
- o Allow foreign built ships to be eligible immediately for preference cargoes.
- o Work with other agencies to achieve administrative savings in cargo preference programs.

6) *Move towards international standards on construction, stability, and manning.* Adopting international standards would lower carrier costs for both ship acquisition and ship operations.

<u>(2) Delay submission of any legislative proposal until the end of the summer.</u>

This option would delay making any legislative proposals until the end of the summer--after the DOD had completed its "bottom-up" review of defense needs, and (since many of the carrier provisions in the DOT proposal are in fact designed to subsidize U.S. shipyards) after the Administration has completed its Congressionally-mandated study of policies that could return U.S. shipyards to commercial viability.

The rest of the Group does not agree with DOT's conclusion that delaying a few months (and thus pushing any new funding from FY 1994 to FY 1995) would substantially harm the ability of the U.S. to retain a flag fleet beyond 1997. Which view is correct depends on the number of ships that will be ordered between now and whenever legislation is submitted to the Congress.

The reflagging of <u>existing</u> ships is a simple and relatively inexpensive process as long as the ships conform to U.S. standards. But if U.S. carriers order new ships built to international standards rather than U.S. standards, those ships will never be registered under the U.S. flag. The Group agrees that the major U.S. carriers are poised to acquire significant numbers of new ships. The Group does not agree with DOT's view that most of these acquisitions will take place before the fall (even after firms agree to purchase ships, the firms have some time before they need to specify whether the ships are to be built to U.S. or other standards).

The delay option is motivated solely by a concern that the Administration does not yet have the information needed to assess whether the DOT proposal will achieve its stated ends in the most cost-effective manner possible.

First, the Group does not yet know DOD's requirements:

- The DOD is currently reviewing its sealift requirements. Since the funds needed to support "requirements" for all purposes exceed the DOD budget, DOD must make tradeoffs among the possible uses of its limited resources. DOD would like these tradeoffs to be informed by the results of its bottom-up review. While DOD would be grateful for the sealift capacity that would be available under the DOT proposal, DOD has not yet decided that this capacity represents the best use of scarce defense resources. (The subsides for bulkers, for example, at this point appear to be an especially unwise use of defense resources, for DOD included <u>no</u> bulkers in its most recent Military Requirements Study.)

Second, the Group cannot yet assess whether the DOT plan is the most cost-effective means of acquiring sealift capacity:

- DOD is currently evaluating the cost of alternative means of meeting its sealift requirements (e.g., greater reliance on ships that are either U.S.-owned but foreign flagged, or are part of the "effective U.S. controlled" fleet; increasing the Ready-Reserve Fleet; establishing Merchant Marine reserve crews)
- the Group does not yet know the minimum amount needed to prevent reflagging by U.S. carriers (though the industry itself states that $2.5 million per ship per year, with indexing for inflation, would be needed if all of the other financial supports in DOT proposal were granted).
- experience with other industries suggests that the DOT proposal could be more cost effective if the payments to carriers were determined by an open bidding process.
- the tax proposals are specified so broadly that Treasury has been unable to complete a revenue estimate. The proposals appear to be bad tax policy (e.g., allowing CCF to be used for lease payments would permit beneficiaries to arbitrage tax benefits, something the Administration would not wish to see in other circumstances). The Group has yet to find a reason why the benefits provided by these proposals should not be granted instead through additional direct subsidies, thereby avoiding the deadweight economic loss incurred by tax expenditures.
- OMB cannot yet estimate the cost of the loan guarantees with any degree of confidence. [if further study will not give OMB a better handle on this, we drop this par. and just live with what we have] The Group has not yet considered other mechanisms by which the federal government could write down the cost of U.S.-built ships.
- the Group does not yet know the cost to different agencies of adhering to the "letter and spirit" of cargo preference laws. Several agencies, including Department of Agriculture and the Agency for International Development, strongly oppose the continuation of cargo preference, much less a "letter and spirit" Executive Order. These agencies--along with DOD, OMB, CEA, and others--argue that both foreign aid and support for U.S.-flag carriers could be made more efficient by separating the two programs. Agriculture and AID have stated their willingness to see their budgets reduced by the amount of their cargo preference expenses in exchange for converting cargo preference subsidies to direct payments to carriers.

Finally, adopting international construction standards would clearly help carriers, but at what cost to U.S. labor and other affected parties? The Group has not yet considered the evidence on this issue (though the Group suspects that, in the end, this proposal may be uncontroversial).

SHIPYARDS

Background

The U.S. ship-building industry is not competitive in the global commercial market. Since

1960, U.S. shipyards have produced no commercial, ocean-going ships for non-U.S. owners. They continued to remain in the construction and repair business for the U.S.-flag fleet thanks to a variety of subsidies, many of which also benefit US carriers and mariners. These subsidies include:

1) *The Jones Act*, which requires domestic waterborne trade to be carried on U.S.-built ships;

2) *Title XI*, which provides federal guarantees of private loans made for the construction of U.S.-built ships;

3) *Operating Differential Subsidies*, which are made available only for U.S.-built vessels;

4) *Capital Construction Fund (CCF)*, which can be used only for U.S.-built ships;

5) *Cargo Preference Programs*, which require foreign-built vessels to wait 3 years before they can carry preference cargos;

6) *Ship Repair Tariff*, under which the U.S. Customs Service levies a 50 percent tariff on the costs of repairs made to U.S.-flag vessels in foreign shipyards. In 1991, tariffs on foreign repairs amounted to $21.1 million.

7) *Construction Differential Subsidy (CDS)*. Until 1981, the federal government underwrote the extra cost imposed by building ships in U.S. yards instead of foreign yards. The CDS program expired in 1981.

During the 1970s, U.S. yards had either on order or under construction an average of 72 merchant ships a year. With the elimination of the CDS in 1981 and the rising demand for ships by the U.S. Navy, construction of merchant ships in U.S. yards fell to 21 ships a year. Since 1988, there have been only 7 merchant ships either on order or under construction in U.S. yards. (The number of naval ships, by contrast, rose from an average of 79 per year in the 1970s to an average of 95 a year in the 1980s). Notwithstanding the rise in naval orders, industry employment has fallen steadily in the last decade. Between 1982 and 1992, the number of workers employed in the shipbuilding business has fallen from 167,000 to 118,000.

In 1993, U.S. shipyards have a backlog of 87 naval vessels.. However, plans forward by the Bush Administration called for the reduction in naval construction of 30-40 naval ships a year in the late 1990s. DOD's bottom-up review will provide a more accurate figure. Even under the previous scenario, the projected decline in demand for ships by the Navy in the 1990s would leave U.S. yards with substantial excess capacity.

Rationales for Action

1) *Defense Conversion and Reinvestment.* Shipyards are not now competitive in the production of commercial ships on the basis of delivery time, quality, or price. The ITC estimates that U.S. bid prices for commercial ships average 97 percent more than comparable world bids. (Price differentials are lower for some types of ships.)

A number of studies project an increase in worldwide demand for new commercial ships, due to the aging of the existing fleet and new enviornmental regulations. This new demand offers an opportunity for U.S. yards, if they are able to reduce costs, increase quality, and speed up delivery time.

2) *Level the Playing Field.* Many foreign governments provide subsidies to their shipyards. Using OECD data, the ITC estimates that these subsidies cover an average of 5.9 percent of costs. Using Shipbuilders Council data (which overstate the value of some subsidies), the ITC estimates that these subsidies cover an average of 23.5 percent of the costs. Since 1989, the U.S. government has participated in OECD negotiations to phase out shipbuilding subisdies. All members of the Working Group believe that the United States should continue to urge its trading partners to bring these negotiations to a successful completion.

OPTIONS

The Working Group considered two options. The option advanced by DOT would provide immediate assistance to the shipbuilding industry. The second option would delay action until a date closer to the time that the Congressionally-mandated working group on the U.S. Shipbuilding Industry issues its report to Congress on (or before) October 1, 1993.

(1) Immediate Assistance for Shipbuilding Industry

The DOT proposes a variety of measures to provide immediate support the U.S. shipbuiding industry. These measures include:

1) *Enact U.S. legislation that provides redress against foreign shipbuilding subsidies* (through the application of anti-dumping laws, counter-veiling duties, and other penalties) to provide a lever for U.S. negotiators.

2) *Funding for shipbuilding R&D projects by ARPA, with subsidy for payments to U.S. shipyards building ships for the new program.* The R&D component is designed to solve the shipyards' need for new technology, production techniques, and vessels designs. The proposed subsidies (which include loan guarantees, performance bonds, and CDS) are intended to offset the higher costs of building in the U.S. shipyards until they become more competitive. Although some proposals may not need such support, ARPA has projected

that the potential total cost of the program for 1993-2001 could reach $2.5 billion. Approximately half would consist of R&D support to be funded by the Technology Reinvestment Program; the other half would consist of payments to offset higher production costs to be funded by DOT. The program provides several decision points at which time all funding could be ended.

3) *Domestic-build requirements.* For 5 years, U.S. carriers participating in the new payment program would be required to build 1 vessel in a U.S. shipyard for each 2 they bild in foreign yards. DOT would provide subsidies covering up to 50 percent of cost differential in year 1 declining to 10% in year 5. The program is expected to provide work for U.S. yards before 1995--the year in which ARPA expects its first funded ships will be built. The program, which is anticipated to lead to the building of approximately 15 to 20 ships, is designed to reduce opposition to the purchase of foreign ships by U.S.-flag carriers. It also includes a sunset option.

4) *Provide New Funds for Loan Guarantees.* Fund Title XI program at $75 million in each of FYs 1994 and 1995, and at $50 million in FY 1996, with guarantee authority carrying over until all funds expended. Although DOT is not sure whether shipyards can provide the necessary collateral, it views loan guarantees as a low cost way of helping U.S.-flag operatiors attract capital to finance acquisition of U.S.-built ships.

5) *Reaffirm support for the Jones Act's U.S.-build requirements.*

6) *Adopt tax incentives described above under "CARRIERS."*

(2) Delay Legislative Proposal until Submission of Congressionally-Mandated Plan

No legislative proposal would be made until the end of the summer, after DOD has completed its "bottom-up" review, and after the Congressionally-mandated Administration interagency working group had completed its study of the U.S. shipbuilding industry.

In reviewing the DOT proposal, many Working Group members noted that substantial past subsidies did not enable shipyards to become commercially viable. In light of the proposed subsidies, opponents of the DOT program may be tempted to argue that it is designed less to assist the conversion of the shipyards than to overcome their opposition for more programs for the carriers.

The National Defense Authorization Act for FY 93 requires the President to set up a working group for the sole purpose of examining these issues and, by October 1, 1993, proposing a plan to assist the revitalization of the U.S. shipbuilding industry. Delaying action provides this group with the opportunity to gain a better understanding of the problems facing the industry and therefore to evaluate whether the program suggested by DOT and ARPA will actually work.

No immediate action is required. Since, under the Technology Reinvestment Program, ARPA will not receive its preliminary proposals from yards until June, the additional time is likely to yield a more accurate estimate of the cost of the ARPA program.

SHIPPER ISSUES

Background.

Since 1936, the U.S. has allowed U.S. carriers to participate in international shipping cartels known as conferences. The law regulating conferences was last amended in 1984. In 1990, the BIG TITLE brought together carriers and shippers to seek consensus on further changes to the Act. No agreement was reached.

Shippers continue to press for relief from strictures imposed by the Act, and are likely to try and block any new subsidies for carriers without some action to address their concerns.

Carrier conferences impose welfare losses that remain unquantified. The Department of Justice argues that conferences increase in shipper costs by 10-15 percent. In contrast, the Federal Maritime Commission notes language in the 1984 Act that bars conferences leading to "unreasonable reduction in transportation service or unreasonable increase in transportation cost," and argues that conferences have little long-term effect on carrier rates. In echoes of earlier debates, the Commission claims that deregulation would spur an initial round of price cutting followed by consolidation and price increases that leave shippers no better off than before). The Group does not yet agree on the validity of the extant empirical evidence.

Rationale for Action

If the Shipping Act does impose net economic losses, the Administration may wish to propose changes to the Act. Moreover, such changes may ease Congressional passage of whatever support the Administration deems warranted for carriers and shipyards.

OPTIONS

(1) Immediately Call Shippers and Carriers to Work Towards Consensus Reforms

This would allow the other elements of the DOT plan to go forward with some recognition of the concerns of shippers.

(2) Delay any Announcement Pending Review of Recommendations by Executive Agencies

on Reforming the Shipping Act

The Department of Justice, the CEA, and major government shipping agencies have recommended that the Administration review the various deregulatory changes to the Shipping Act. Making no announcement now would allow the Administration time to develop its position on these issues. Moreover, if deregulation were desired, it could probably be achieved more easily if it were combined with new subsidies for carriers and shipyards.

THE UNDER SECRETARY OF DEFENSE
WASHINGTON, DC 20301

ACQUISITION

APR 28 1993

Honorable W. Bowman Cutter, III
Deputy Director to the President
for Economic Policy
Room 231
Old Executive Office Building
Washington, DC 20500

Dear Bo:

I understand that the Secretary of Transportation is proposing an initiative to revitalize the U.S.-flag maritime industry of the United States and that this revitalization initiative is currently being reviewed by a National Economic Council interagency working group.

One of the proposals in the initiative discusses a new federal assistance program which would replace the current Operating Differential Subsidy Program for ship operators which is funded by the Department of Transportation (DOT). This new program would provide a $2 million to $2.5 million per year subsidy to approximately 110 ships at an estimated cost of $2.5 billion over 10 years. Since there are apparently no funds identified for this subsidy, offsets from Department of Defense (DoD) or some other government program would be required.

Another proposal could result in the funding of a portion of the program's shipbuilding initiative from the DoD budget on the basis that there are important "dual-use" aspects of the commercial shipbuilding industry which could merit the use of defense conversion funds to offset the differential between U.S. and foreign shipbuilding costs.

You know that I strongly support exploration of all legitimate "dual-use" initiatives; however, I must resist extending subsidies to other programs, no matter how worthy from a commercial viewpoint, that do not meet a significant military need in the long or short term. If the Department determines that the subsidies suggested in the maritime revitalization proposals, which I have discussed, do not serve a valid military need, or are not the most cost-effective options, I intend to oppose DoD participation in the funding of these two initiatives.

If the DOT believes that federal assistance can materially improve the competitiveness of the U.S. commercial ship building industry and ship operators, and such a program meets Administration priorities, funding should be included in the DOT budget.

I would appreciate hearing your views on how I should proceed in this matter.

Sincerely,

John M. Deutch

cc:
Dr. Gordon Adams, OMB
Mr. Robert Bell, NSC
Ms. Alice Maroni, PD, DoD Comptroller
Mr. Richard Bowman, Acting Maritime Administrator

NATIONAL SECURITY COUNCIL
WASHINGTON, D.C. 20506

May 7, 1993

ACTION

MEMORANDUM FOR WILLIAM H. ITOH

THROUGH: ROBERT G. BELL RGB

FROM: STEVEN R. JONES

SUBJECT: Defense Proposed Report on Removing Barriers to Commercial/Defense Integration

OMB has submitted the DoD report "Removing Barriers to Commercial/Defense Integration" to the NSC for comment. The report is in response to FY92/93 Congressional request to submit such a study by September 30, 1992.

The report is late in part due to waiting on the findings of the Acquisition Law Advisory ("Section 800") Panel. This report comments on the Panel's findings, as well as those of the recent Defense Conversion Commission.

The report does a commendable job in summarizing major barriers in the areas of military specifications and standards, cost and pricing data requirements, unique statutory contract requirements and technical data rights. These findings restate those that have been enumerated in many previous studies.

The important point now is how these recommendations are implemented. The Deputy Secretary of Defense has stated his commitment to make major improvements in defense acquisition, and has appointed a new Deputy Assistant Secretary for Acquisition Reform to lead this effort. Procurement reform is also being reviewed and coordinated within the Office of Federal Procurement Policy and within the NEC-led Defense Conversion Working Group. I am representing the NSC in these EOP efforts.

Concurrences by: Keith Hahn, Jeremy Rosner

RECOMMENDATION

That you sign the memorandum at Tab I.

Attachments
Tab I Memorandum for Signature
Tab II Incoming Correspondence

NATIONAL SECURITY COUNCIL
WASHINGTON, D C 20506

MEMORANDUM FOR JAMES J. JUKES

FROM: WILLIAM H. ITOH

SUBJECT: Defense Proposed Report on Removing Barriers to Commercial/Defense Integration

The National Security Council has no objections to the draft legislation.

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503

3066

April 30, 1993

LEGISLATIVE REFERRAL MEMORANDUM

LRM #M-224

TO: Legislative Liaison Officer -

COMMERCE - Michael A. Levitt - (202)482-3086 - 324
JUSTICE - Faith Burton - (202)514-2141 - 217
LABOR - Robert A. Shapiro - (202)219-8201 - 330
STATE - Bill Keppler - (202)647-2137 - 225
TREASURY - Richard S. Carro - (202)622-1146 - 228
NSC - William H. Itoh - (202)395-3723 - 249
CEA - Francine Obermiller - (202)395-5036 - 242
GSA - William R. Ratchford - (202)501-0563 - 237
NEC - Sonia Mathews - (202)456-6722 - 429
NASA - Mary D. Kerwin - (202)358-1948 - 219
OSTP - Damar Hawkins - (202)456-6272 - 288

FROM: JAMES J. JUKES (for) Jim
Assistant Director for Legislative Reference

OMB CONTACT: **Jim BROWN (395-3473)**
Secretary's line (for simple responses): 395-3454

SUBJECT: DEFENSE Proposed Report on Removing Barriers to Commercial/Defense Integration

DEADLINE: 3:00 P.M. Friday May 14, 1993

OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President, in accordance with OMB Circular A-19.

Please advise us if this item will affect direct spending or receipts for purposes of the the "Pay-As-You-Go" provisions of Title XIII of the Omnibus Budget Reconciliation Act of 1990.

CC:
John McClelland
Cyndi Vallina
Bob Damus
David Haun
Ahmad Al-Sammarie
Mike Goad

LRM #M-224

RESPONSE TO LEGISLATIVE REFERRAL MEMORANDUM

If your response to this request for views is **simple** (e.g., concur/no comment) we prefer that you respond by **faxing** us this response sheet. If the response is **simple** and you prefer to call, please **call the branch-wide line** shown below (NOT the analyst's line) to leave a message with a secretary.

You may **also respond** by (1) calling the analyst/attorney's direct line (you will be connected to voice mail if the analyst does not answer); (2) sending us a memo or letter; or (3) if you are an OASIS user in the Executive Office of the President, sending an E-mail message. Please **include** the LRM number shown above, and the **subject** shown below.

TO: Jim BROWN (395-3473)
Office of Management and Budget
Fax Number: (202) 395-3109
Analyst/Attorney's Direct Number: (202) 395-3473
Branch-Wide Line (to reach secretary): (202) 395-3454

FROM: ______________________ (Date)

______________________ (Name)

______________________ (Agency)

______________________ (Telephone)

SUBJECT: DEFENSE Proposed Report on Removing Barriers to Commercial/Defense Integration

The following is the response of our agency to your request for views on the above-captioned subject:

_______ Concur

_______ No objection

_______ No comment

_______ See proposed edits on pages ______________

_______ Other: ______________________

_______ FAX RETURN of _____ pages, attached to this response sheet

ASSISTANT SECRETARY OF DEFENSE
WASHINGTON, D.C. 20301-8000

PRODUCTION AND
LOGISTICS

Honorable Ronald V. Dellums
Chairman, Committee on Armed Services
House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

This report is submitted in response to the requirement in section 831(b) of the National Defense Authorization Act for Fiscal Years 1992 and 1993 (Public Law 102-190). I have also sent a copy to the Chairman of the Committee on Armed Services, U.S. Senate.

The attached report describes the process we used to identify the barriers to integrating the commercial and defense sectors of the U.S. industrial base and proposes actions to be taken by the Department of Defense to facilitate further integration. The report also identifies specific laws that require changes in order to bring about a greater integration of the commercial and defense sectors of the industrial base of the United States.

As prescribed by Section 831(b), this plan was prepared with input and assistance from the Military Departments, the Defense Logistics Agency, numerous industry association representatives, selected industry officials, and others with interest and expertise in the area of commercial acquisition. We believe it is a good plan that identifies the major barriers to further integration of the commercial and defense sectors of the industrial base. We will move out to remove the barriers that are imposed solely by us. We seek your support--and offer our assistance to you--in eliminating those barriers imposed by statute.

Sincerely,

David J. Berteau
Principal Deputy

Enclosure

cc: Honorable Floyd D. Spence
Ranking Republican

ASSISTANT SECRETARY OF DEFENSE
WASHINGTON, D.C. 20301-8000

PRODUCTION AND
LOGISTICS

Honorable Sam Nunn
Chairman, Committee on Armed Services
United States Senate
Washington, DC 20510

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Sincerely,

David J. Berteau
Principal Deputy

Enclosure

cc: Honorable Strom Thurmond
Ranking Republican

Removing Barriers

to

Commercial/Defense Integration

Office of the Assistant Secretary of Defense

Production and Logistics

May 1993

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Executive Summary

Section 831(b) of Public Law 102-190, the National Defense Authorization Act for Fiscal Years 1992 and 1993, required the Department of Defense to submit a plan for the removal of barriers to the effective integration of the commercial and defense sectors of the U.S. industrial base.

This report identifies four barriers to integration, it describes actions planned by the Department to minimize or remove them, and it recommends legislative actions required to eliminate barriers beyond the Department's control. The barriers identified in this report all stem from Federal actions; none are unique to States or localities.

DoD has a substantial interest in pursuing such a plan. Several trends make the need for integration more compelling, including:

1. a declining defense budget, which gives us less influence in the marketplace;

2. the need to strengthen the industrial base, on which we must depend in the event of a future conflict; and

3. the desire to achieve the benefits of the state-of-the-art technologies increasingly available in the commercial marketplace.

Our goals are to bring more commercial companies into the procurement process, to facilitate transition of defense contractors to multi-role suppliers, and to reduce the incentive to segregate commercial and defense business for companies that sell to both markets. These goals will be achieved by eliminating defense unique requirements -- statutory, contractual, and technical -- to the greatest extent practical, without compromising necessary oversight, accountability, or the maintenance of essential industrial capability.

Findings and Proposed Actions

We found four major barriers to the integration of the commercial and defense sectors:

1. **Military specifications and standards.** This barrier will be tackled by a combination of actions by the Department including education, emphasis within DoD on eliminating unnecessary military specifications and standards, and cooperative efforts with industry groups to convert from a reliance on military documents to industry standards and commercial item descriptions.

2. Cost or pricing data/accounting requirements. Congress should take action to exempt all commercial items from TINA, whether or not such items are sold in substantial quantities to the general public, and permanently raise the contract dollar threshold above which cost or pricing data must be submitted to $500,000. DoD will encourage its contracting officers to make greater use of market research and price analysis techniques through expanded training programs in commercial acquisition and personnel incentives, and the potential for extending DFARS 211 to subcontractors, even when the prime contract is not covered by DFARS 211, will be explored.

3. Unique statutory obligations implemented in contracts. Congress should act to remove legislative barriers to integration, especially those statutory impediments that are unique to defense acquisition. For example, Congress should act favorably on the recommendation of the Acquisition Law Advisory Panel to adopt a "simplified acquisition threshold" that would exempt DoD contracts below $100,000 from most socioeconomic requirements and corresponding contract clauses. The Department is reviewing the recommendations of the Defense Conversion Commission and the Acquisition Law Advisory Panel and, like the Defense Conversion Commission, strongly endorses the simplification of acquisition laws.

4. Technical data rights. Although the Acquisition Law Advisory Panel has recommended statutory changes to allow the Secretary of Defense to use technical data rights policies that provide protection for commercially valuable technology, the Advisory Committee on Technical Data Rights, established pursuant to Section 807 of Public Law 102-190, the National Defense Authorization Act for Fiscal Years 1992 and 1993, is still reviewing this issue. We continue to await recommendations from the Advisory Committee on Technical Data Rights.

ANALYSIS OF IMPEDIMENTS TO THE INTEGRATION OF THE COMMERCIAL AND DEFENSE SECTORS OF THE INDUSTRIAL BASE

Charter

In section 831(b) of Public Law 102-190, the National Defense Authorization Act for Fiscal Years 1992 and 1993, the Department of Defense was directed to submit a plan for the removal of barriers to the effective integration of the commercial and defense sectors of the U.S. industrial base (see Appendix A). The Deputy Assistant Secretary of Defense for Production Resources is designated as the official responsible for identifying the barriers and planning the actions needed to eliminate them.

This report includes recommendations for legislation necessary to remove the identified barriers, a discussion of the actions to be taken by the Department of Defense (DoD) to remove identified barriers, and a summary of the information used in developing this plan. The barriers identified in this report all stem from Federal statutes or regulations. No barriers were found at the State or local level.

In addition to this legislative requirement, a major independent review of acquisition law was already in progress, as directed by section 800 of Public Law 101-510 (the National Defense Authorization Act for Fiscal Year 1991). Congress directed DoD to establish the DoD Advisory Panel on Streamlining and Codifying Acquisition Laws. The panel's purpose was to review all laws affecting DoD procurement "with a view toward streamlining the defense acquisition process." The panel's report, completed in January 1993, contains specific recommendations to change present law to an understandable and streamlined code. As of the date of this report, the Department is conducting a thorough review of the Acquisition Law Advisory Panel's recommendations. Although the Department's position must await this review, we believe that the Panel's report represents an excellent starting point for achieving commercial-military integration which should be considered by the Congress.

DoD interest in effective integration

With the downsizing of the defense procurement budget, the Department would benefit from greater integration of commercial and defense production in all areas of industrial production, except for those industries that are uniquely military, such as the production of submarines and tanks. The sustainment of critical industries such as those will require a different strategy. For the most part, however, the national defense will be best served by greater reliance on the commercial industrial base and, wherever possible, by greater use of commercial products to meet national defense requirements.

Even in those areas where defense products are unique, it should often be possible to integrate factory operations because the production processes will be very similar. Defense and commercial electronic systems are an obvious example. Additionally, even for those operations that are defense-unique (i.e., in both their product and process), civil/military integration of components, material, software, manufacturing equipment, etc. will lead to a more flexible and responsive industrial base.

DoD has a substantial interest in pursuing such a plan. Several trends make the need for integration more compelling.

1. Budgetary. Outlays for military hardware are expected to decline from a high of $96.8 billion in 1985 to about $60 billion in 1993 — a drop of more than 59% after adjusting for inflation. The Department is actively exploring all opportunities to increase procurement cost effectiveness and efficiency, including civil/military integration.

2. Industrial Base. A shrinking budget invariably results in a contraction within the defense industrial base. Given sizeable budget reductions, DoD should take necessary actions that ensure the availability of the requisite manufacturing capability when it is needed to meet projected future requirements. Greater reliance on commercial capabilities would augment the defense industrial base and bolster DoD's surge and mobilization requirements.

3. State-of-the-Art. At one time, the technologies which DoD procured were far more sophisticated and technologically precise than what was commercially available. Today in several key sectors -- notably, electronics and materials -- commercial developments are at the cutting edge of technology. We believe DoD can enhance force effectiveness and potentially reduce developmental cost by taking advantage of commercial state-of-the-art.

Our goal is to bring more competitors into the procurement process by eliminating barriers that discourage them from doing business with DoD. By eliminating requirements that add costs to commercial firms' normal business practices — costs which are passed on to the government — and by the increased competition from having more firms participate in selling to the government, we also hope to obtain the best value for government procurement dollars.

Barriers to Commercial Procurement

Perhaps the single largest barrier to greater competition and commercial-military integration rests with the complexities of the procurement system itself. That system is a product of accretion -- legislation, and the body of regulations that implement such legislation -- which, taken in the aggregate, may pose an entry barrier to commercial companies.

Many commercial firms are unable or unwilling to do business with the Federal government. Laws and implementing regulations governing procurement affect hiring and employment practices, suppliers and sources of supply, accounting and management systems, and pricing of goods and services. Many commercial companies are unwilling to alter standard (and highly competitive) commercial practices for what amounts to a small percentage of total business.

The issue for DoD is not simply access to existing products or services. Rather, the problem is access to commercial capabilities. Most commercial firms have the ability to tailor products and services to particular customer needs. This is part of what makes American companies competitive. These companies do not lack the technology or expertise that we need. What they do lack are the management information systems needed to collect the kinds of specialized data the government requires of its contractors.

The contractual obligations imposed by law on government procurement are intended to achieve a number of worthwhile goals:

- to ensure that government procurement dollars are leveraged in support of social and economic objectives;
- to provide equal access to all potential bidders;
- to ensure that the government receives high quality and extremely reliable systems that can protect both American lives and interests; and
- to protect the government's own interest in obtaining fair and reasonable prices.

In the process, however, a labyrinth of requirements has been created which makes it impossible for many commercial firms to sell to the government using commercial practices. Moreover, these requirements are fundamentally at odds with a different and more recent procurement priority mandated by Congress: namely, to achieve greater efficiency in procurement through reliance on commercial suppliers. Commercial sellers find it necessary to spend additional funds to separately allocate the use of existing facilities, technologies, supplier networks, processes, employees, and business procedures between U.S. Government procurements and commercial procurements.

Specific Barriers

Through surveys of the Military Departments, major defense industry associations and selected industry executives, as well as a joint government-industry workshop on July 30, 1992 (methodology detailed in Appendix B), we found four major barriers to the integration of the commercial and defense sectors:

- Military specifications and standards
- Cost or pricing data/accounting requirements
- Unique statutory obligations implemented in contracts
- Technical data rights

Each of these areas is discussed in turn.

I. Military Specifications and Standards

A frequently cited criticism of Defense procurement is the use of cumbersome, overly detailed military specifications and standards. These may exclude commercial offerings when the product or process described cannot be met by commercial companies (even though the end product may be functionally equivalent in performance).

The DoD regulations for acquiring commercial items, DFARS 211.70, prohibit the use of military specifications or standards that would impede competition for commercial items.

To achieve dual-use specifications, the Department -- through the Defense Standardization Program -- is pursuing a number of continuing efforts to promote the use of commercial type specifications and standards. The specifications used must not exclude commercial alternatives unnecessarily. For the past 10 years, we have increasingly focused on substituting non-government standards (NGS) and commercial item descriptions (CIDs) for detailed military specifications and standards.

DoD technical officers, such as engineers at DoD engineering and research facilities and specification preparing activities, are encouraged to take part on committees of industry standard-setting bodies to develop standards that meet both government and commercial needs. Where non-government standards do not exist (as is the case for many of the items DoD procures), the Department is making greater use of simplified purchase descriptions — CIDs. For example, a 20-page military specification for outboard motors has been replaced with a 2-page CID.

There has been a steady increase in DoD use of non-government standards and commercial items descriptions. To date, DoD has adopted nearly 5,500 non-government standards and developed nearly 4,600 CIDs. These have replaced thousands of military specifications and standards. Although the 1980's represented a decade of rapid expansion in new military equipment, due to emphasis on commercial type documents, there now are nearly 2,500 fewer military specifications and standards.

An area that also continues to create a substantial barrier to more effective integration of commercial and defense procurement is DoD use of high level process standards. These are standards which detail such things as how work is to be managed; that is, how the company ensures reliability, survivability, safety, and even the proper man-machine interface. Such "how-to" standards, when made a contract requirement, do not permit companies to use their own internal standards, regardless of whether the end products meet all functional, performance and quality requirements. As part of the Defense Management Review, we identified those documents that are consistently cited by industry associations and both small and large contractors from a variety of manufacturing areas (e.g., aerospace, automotive, electronics), as ones which drive up costs and create barriers to integrating commercial and military process flows. Many of the same documents had been identified by previous independent reviews. Though many of these documents have since been revised, they continue to include many "how-to" requirements. (See Appendix C for a current list of fifty-five documents considered by industry as most in need of action to eliminate counterproductive requirements.)

Additionally, the Department continues to emphasize training the acquisition workforce as a way to effect a cultural change from dependence on military specifications and standards to the use of non-government standards and commercial item descriptions. We recently revised our specification preparation course to put more emphasis on use of commercial and nondevelopmental items. During 1993, a joint DoD working group will be reviewing the entire spectrum of acquisition courses, under the auspices of the Defense Acquisition University, to ensure that proper emphasis is given to acquisition of commercial and other nondevelopmental items.

Proposed Action Plan:

a. DoD will continue to participate with industry associations to develop industry standards and will adopt available industry standards when it makes sense to do so in lieu of military specifications and standards.

b. DoD will continue to emphasize preference for commercial items and, where appropriate, will replace military specifications with commercial item descriptions.

c. DoD will give priority management attention to a review of process standards that industry groups have identified as being the most troublesome and develop replacement standards, or establish why current standards must be maintained.

d. DoD will continue to emphasize training to effect the necessary cultural change from dependence on military specifications and standards to greater reliance on industry standards and commercial item descriptions.

II. Cost or Pricing Data/Accounting Requirements

Possibly the most significant barrier to integration of defense and commercial manufacturing and business operation is the requirement for cost and pricing data established under the Truth in Negotiations Act (TINA), Public Law 87-653, as amended. Cost or pricing data are intended to provide information which can be used to determine if the Government is paying a fair and reasonable price for a product when other marketplace controls are not in effect. Data are required except when specific criteria for exemptions are met. The statutes provide for four exemptions:

- the price is based on established catalog or market prices of commercial items sold in substantial quantities;
- the price is based on adequate price competition;
- the price is set by law or regulation;
- the head of the agency makes a written determination that the requirement may be waived.

The barrier created by these requirements has two facets: first the circumstances and amount of data necessary to qualify for an exemption to providing such data, and second, the difficulty or undesirability of collecting and providing the data in the form required by the DoD. If we accept the latter, then to reduce this barrier to integration, we must change the former.

Although commercial items are exempted from the provisions of the statute, the standard for this exemption is very restrictive. The requirements for "catalog price" and "substantial sales" in TINA reflect a mass production approach. Mass production, however, is increasingly obsolete in the modern manufacturing environment, where items are customized to individual needs and entire production lines are changed in a matter of days or, possibly, even a matter of hours. Commercial manufacturing capability can be tapped to produce customized or militarized versions of standard commercial products. Perhaps even more significantly, military unique products can be produced in commercial production facilities, taking advantage of the latest in manufacturing technology. But many commercial entities are not able or willing to collect and report to the government, cost or pricing data as the price of admission to the government contracting arena.

The statute provides an exemption from the requirement to submit cost or pricing data when there is a competitive procurement. Industry representatives allege that the potential for challenges from auditors in the Office of the DoD Inspector General (IG) and General Accounting Office (GAO), as well as from disappointed bidders, has led contracting officers to ask for cost or pricing data where they should not. Specific instances of this practice have not been provided by industry representatives.

Many have questioned why cost data presents such a problem for commercial firms. The answer lies in the indirect linkage between the TINA requirement for cost and pricing data and Cost Accounting Standards (CAS). When TINA was enacted in 1962, contractors simply reported on their costs using their own accounting procedures. The implementation of CAS in 1970 created uniform accounting procedures, meant for large government contractors. In theory, any company which meets the "10-10-10 test" — a contract for less than $10 million, to a business unit with less than $10 million in DoD contracts, whose defense sales were less than 10% of the unit's total sales — is exempted from CAS compliance. Even then, the contract may still be subject to modified CAS coverage.

In practice, however, companies providing cost data under TINA must also allocate their costs in accordance with CAS rules in order to certify their data -- even though the contract itself is exempted from full CAS compliance. Because many commercial accounting systems do not allocate costs in accordance with CAS and the rules for what are allowable or unallowable expenses, companies either refuse to bid on government contracts where cost or pricing data might be required or they are forced to set up separate systems in order to comply. This contributes to a plant having separate administration — and, sometimes, separate production lines — for items sold to the government, and the additional costs incurred are passed back to the government in the form of higher prices.

The generic problem of cost or pricing data has been addressed in a number of ways. Section 803 of Public Law (P.L.) 101-510, the National Defense Authorization Act for Fiscal Year 1991, temporarily (through December 31, 1995) raised the threshold for mandatory cost or pricing data to $500,000, thereby expanding the exemption (this brought the requirements for cost and pricing data in line with the existing threshold for cost accounting standards established by Section 5 of P.L. 100-679, "OFPP Act Amendments of 1988"). In addition, pursuant to Section 824 of P.L. 101-189, "National Defense Authorization Act for Fiscal Years 1990 and 1991," the DoD has created a streamlined commercial contracting process in the Defense Federal Acquisition Regulation Supplement (DFARS) Subpart 211.70, Contracting for Commercial Items, which limits the requirement for submission of cost or pricing data on commercial items.

In practice, neither solution has been entirely effective. The higher threshold is still on the low side, given inflation rates since 1962. DFARS 211.70 has some clear limitations. First, over 60 statutorily based clauses must be inserted in the "simplified" contract, which continues to burden commercial companies. (This is dealt with in greater detail in the next section.) Second, DFARS 211.70 procedures apply only when the prime contract is for a commercial item, not to commercial components, materials, or subsystems in defense systems -- the most significant targets of opportunity for commercial procurement.

Finally, a related issue is the proliferation of certification requirements. Incorrect certifications may carry criminal, civil, or administrative penalties, sometimes irrespective of error, or intent to defraud. Since many potential commercial suppliers lack the requisite accounting and management information systems that can provide the types of information that must be certified, they back away from federal business. They simply are not willing to incur the additional cost of altering internal accounting and reporting systems to be able to certify with assurance.

Proposed Action Plan

In this area, joint action by Congress and the DoD is required.

Congress:

a. Exempt commercial items from TINA, regardless of whether or not the items are sold in substantial quantities to the general public.

b. Permanently raise the contract dollar threshold above which cost or pricing data must be submitted to $500,000.

DoD:

a. Former Deputy Secretary of Defense Atwood reaffirmed the Department's commitment to the acquisition of commercial products in an April 24, 1992, memorandum in which he tasked the Competition Advocates of the Military Departments and Defense Agencies to also become advocates for the acquisition of commercial items. Additionally, the Director, Defense Procurement, published a May 1, 1987, memorandum suggesting that contracting officers may be unnecessarily asking contractors to submit cost and pricing data on contracts where adequate price competition exists. From the memorandum, contracting officers should be able to infer that they need not seek such data on competitive contracts where price is a substantial evaluation factor (at least 20%) in making the award.

b. Contracting officers throughout the Department of Defense must be encouraged to make greater use of market research and price analysis techniques through expanded training programs in commercial acquisition and personnel incentives.

c. The potential for extending DFARS 211 to subcontractors, even when the prime contract is not covered by 211, will be explored.

III. Unique Statutory Obligations Implemented in Contracts

Statutory requirements unique to DoD procurement make it difficult for commercial firms to sell to the government on a commercial basis. As a general matter, the Secretary's authority to exempt contracts for commercial vendors from the application of various statutory requirements is limited. There are very few statutes which expressly provide for such an exemption or permit a waiver for such procurement.

Although the DFARS 211.70 procedures were designed to simplify commercial procurement, the need to impose more than 60 DoD-unique statutory requirements has hindered their effectiveness. Moreover, although DFARS 211 procedures bring at least some relief for suppliers providing purely commercial items to DoD in a competitive award, these procedures do not facilitate the larger area of more effective integration of the commercial and defense sectors of industry.

There are 5 broad categories of statutory requirements which present the greatest barriers to commercial procurement:

- Business Ethics. (These include the Procurement Integrity certification, the Byrd Amendment, and the Covenant against Contingent Fees.) They impose burdensome reporting and certification requirements that do not exist in the commercial sector.

- Accounting Requirements. The CAS requirements, and requirements for cost and pricing data, have been described in the previous section.

- Small Business Subcontracting Plans. These require commercial firms to alter suppliers, often after the product has been produced and offered for sale, which is unrealistic.

- Domestic Sourcing. These require companies to make changes in established supplier networks and sources of supply for their commercial items. It is impossible to comply retroactively once products have been produced and offered for sale.

- Contractor responsibility. (For example, Drug-Free Workplace.) They impose burdensome reporting requirements on commercial contractors.

A list of Executive Orders and statutes which have been identified by industry as the major obstacles to commercial-military integration is attached as Appendix D.

These types of statutes hinder our ability to attract commercial suppliers and deal with them on a commercial basis. It is for this reason that two years ago, we proposed legislation that would exempt commercial items from statutory requirements that prescribe:

- terms and conditions to be included in contracts;

- preferences given to a source or classes of sources; or

- requirements to be imposed on commercial contractors

that are not equally applicable to contracts to which the U.S. Government is not a party. Action by Congress along these lines is essential if we are to make greater use of the commercial industrial base and make the government market attractive to purely commercial suppliers.

Proposed Action Plan

Congress:

Congress should take action to remove legislative barriers to integration, especially those statutory impediments that are unique to defense acquisition. For example, Congress should act favorably on the recommendation of the Acquisition Law Advisory Panel to adopt a "simplified acquisition threshold" that would exempt DoD contracts below $100,000 from most socioeconomic requirements and corresponding contract clauses.

DoD:

The Department is reviewing the recommendations of the Defense Conversion Commission and the Acquisition Law Advisory Panel and, like the Defense Conversion Commission, strongly endorses the simplification of acquisition laws.

IV. Technical Data Rights

Rights in technical data go to the heart of the government's access to commercially developed products and processes. The tension between industry and government revolves around:

- the required level of rights in data, and
- whether the government adequately protects proprietary data.

Under the current regulations, the government can acquire three basic types of rights in data:

- limited rights, which allow the government to use all delivered data for internal purposes only;
- government-purpose license rights, which let the government distribute acquired data to a third party, with restrictions on the use of such data; and
- unlimited rights, which give the government the right to distribute data without restriction.

The fundamental issue is the extent to which the government acquires unlimited rights in data for the purpose of reprocurement. Reprocurement often means delivering detailed manufacturing data to other contractors (including other competitors) in order to modify the design or manufacture an identical product or system. Under current technical data rights regulations, the government may require unlimited rights in data when development of an item or process -- regardless of who funded it -- was accomplished during or required for the performance of the contract or subcontract. This gives the government wide latitude to require unlimited rights in data for commercial technologies that are incorporated into or modified for DoD systems. Consequently, companies allege that the regulations provide a disincentive to apply commercial state-of-the-art products or processes to DoD work.

Another problem area lies in the private sector's belief that the government is unable or unwilling to provide adequate protection for proprietary data delivered with limited or government purpose license rights. True or not, there is a perception by many in industry that once proprietary technical data has been turned over to DoD, the data are not adequately protected under existing law. At issue is the adequacy of protection afforded vendors supplying proprietary technical data under Government purpose license rights. The effectiveness of the restrictive license, granted by the Government to subsequent manufacturers, depends partly on the integrity of the individuals granted the restricted license and the will (and the means) of the original owner of the data to seek damages through the courts when the license has been violated. Industry would prefer that the Government share some liability, rather than have to recover damages from the offending vendor(s) only.

Currently, the Government relies on a contractor's restrictive marking to protect technical data from unauthorized release or disclosure. For example, data marked with a limited rights legend may not be released outside the Government except for emergency repair or overhaul or to foreign governments for evaluational purposes. When the Government releases or discloses data marked with restrictive legends, the effectiveness of the marking depends upon the personal integrity of contractors receiving the data package to not use the knowledge obtained from the government-provided data for commercial work. Under existing law, injured firms would have to seek damages through the courts directly from the offending firms, without any culpability on the part of the Government. Such recourse is not attractive to many commercial companies who would like to avoid the necessity of seeking to recover such damages by not sharing proprietary technical data in the first place.

For the Department, the objective in acquiring detailed manufacturing data is to create price competition by providing the data to multiple sources, thereby expanding the supplier base. In theory, this should result in lower prices. In taking such data with unlimited rights, DoD is able to establish a competitive environment without paying twice for the same development. The issue, however, involves trade-offs which must be more carefully weighed: the price benefits of increased competition versus the price penalties incurred when potential commercial bidders refrain from defense business to protect proprietary data. Another valid concern of the DoD has to do with the acquisition of data rights when firms decide to discontinue production of items that are still in the DoD inventory and for which spare parts and maintenance will continue to be required.

Proposed Action Plan:

This issue has been the focus of much study. The Acquisition Law Advisory Panel has found that modern technology heavily depends on proprietary invention and entrepreneurial innovation. And that if the Government is to have access to such technology, it must respect market-driven norms. Accordingly, that Panel has recommended statutory changes to allow the Secretary of Defense to use technical data rights policies that provide protection for commercially valuable technology. Even while two working groups of the Acquisition Law Advisory Panel have reviewed this issue, the Advisory Committee on Technical Data Rights, established pursuant to Section 807 of Public Law 102-190, the National Defense Authorization Act for Fiscal Years 1992 and 1993, has been reviewing this issue. The Department will await the recommendations of the Advisory Committee on Technical Data Rights.

APPENDIX A

PART D—OTHER DEFENSE INDUSTRIAL BASE MATTERS

SEC. 831. REQUIREMENT FOR SUBMITTAL OF PLANS RELATING TO THE IMPROVEMENT OF THE DEFENSE INDUSTRIAL BASE.

(a) EVALUATION OF USE OF FOREIGN COMPONENTS BY DEFENSE INDUSTRIAL BASE.—(1) The Secretary of Defense shall submit to the congressional defense committees a plan for the collection and assessment of information on the extent to which the defense industrial base of the United States—

(A) procures subsystems of weapon systems, components of weapon systems, and components of subsystems of weapon systems from foreign sources; and

(B) is dependent upon those foreign sources for the procurement of such subsystems and components.

(2) The report shall be prepared in coordination with the Secretary of Commerce and the United States Trade Representative.

(3) The report shall be submitted not later than March 15, 1992.

(b) IDENTIFICATION OF BARRIERS TO INTEGRATION OF COMMERCIAL AND DEFENSE INDUSTRIAL BASE.—(1) The Secretary of Defense shall submit to the congressional defense committees a plan for the removal of barriers to the effective integration of the commercial and defense sectors of the industrial base of the United States.

(2) The plan shall include—

(A) the Secretary's recommendations for any legislation necessary to remove those barriers;

(B) a discussion of the actions to be taken by the Secretary to remove those barriers; and

(C) a summary of the information relied on in the development of the plan.

(3) The Secretary shall designate an official within the Office of the Secretary of Defense to develop the plan. In developing the plan, that official shall, in consultation with appropriate representatives of other departments and agencies of the Federal Government, State and local governments, and the private sector, identify and evaluate—

(A) the areas of industrial production in which a greater integration of commercial and defense activities would be beneficial for national defense purposes;

(B) any Federal, State, and local statutes, regulations, and policies that are barriers to the integration of these activities; and

(C) the actions necessary to remove the barriers to the integration of those activities.

Reports.

(4) The report shall be submitted not later than September 30, 1992.

APPENDIX B

Summary of Information Relied on in the Development of the Report

In gathering the information for this report, comments were solicited from the Military Departments' and Defense Logistics Agency's Senior Acquisition Executives, from most of the major defense industry associations, and from selected industry executives. The Military Departments considered comments from Program Executive Officers and Program Managers in formulating their responses to our office. Various offices within the Department of Defense were also consulted to insure that the Government's interests were protected and all claimants' comments were considered. Special consideration was given to professionals who are concerned with regulatory aspects of Defense acquisition, and to those concerned with the sufficiency of the defense industrial base.

To further assure the reasonableness of the ideas presented in this plan, DoD sponsored a government-industry workshop at the Center for Strategic and International Studies on July 30, 1992. The workshop provided a forum to discuss the barriers to integration of the commercial and defense segments of the industrial base and to try to achieve some consensus recommendations.

Aware that several other initiatives were underway that were dealing with similar concerns, we consulted with individuals involved in these other initiatives, so that our report might complement their efforts and we might avoid duplication of effort. These other initiatives include the DoD Advisory Panel on Streamlining and Codifying Acquisition Laws (also known as the Section 800 Panel) which has provided its report to Congress. Another initiative impacting this study is the Government-Industry Advisory Panel on Technical Data Rights. The report of the Defense Conversion Commission, provided to the Secretary of Defense, also discusses ways to better integrate the defense and commercial sectors of the U.S. industrial base.

The recommendations in this report are generally consistent with those emanating from the above described initiatives.

APPENDIX C

Industry Identified List of DoD Documents Most in Need of Action to Eliminate Counterproductive Requirements

(Note: Documents cited are latest revisions at date of report.)

Specifications

DOD-D-1000B[1]	Drawings, Engineering and Associated Lists
MIL-C-28809B	Circuit Card Assemblies, Rigid, Flexible, and Rigid-Flex
MIL-E-5400T[2]	Electronic Equipment, Aerospace, General Specification for
MIL-E-6051D	Electromagnetic Compatibility Requirements, System
MIL-I-45208A	Inspection System Requirements
MIL-M-38510J	Microcircuits, General Specification for
MIL-P-11268L	Parts, Materials and Processes Used in Electronic Equipment
MIL-P-55110D	Printed Wiring Board
MIL-Q-9858A	Quality Program Requirements
MIL-S-8879C	Screw Threads, Conrolled Radius Root with Increased Minor Diameter, General Specification for
MIL-S-45743E[3]	Soldering, Manual Type, High Reliability, Electrical and Electronic Equipment
MIL-T-31000	Technical Data Packages, General Specification for

Standards

DOD-STD-00100D	Engineering Drawing Practices
MIL-STD-129L	Marking for Shipment and Storage
MIL-STD-130G	Identification Marking of U. S. Military Property
DOD-STD-2167A	Defense System Software Development
DOD-STD-2168	Defense System Software Quality Program
MIL-STD-202F	Test Methods for Electronic and Electrical Component Parts
MIL-STD-210C	Climatic Information to Determine Design and Test Requirements for Military Systems and Equipment
MIL-STD-275E	Printed Wiring for Electronic Equipment
MIL-STD-454M	Standard General Requirements for Electronic Equipment

[1] Inactive for new design since 1 Jul 90; replaced by MIL-T-31000.
[2] Inactive for new design since 1 Aug 92; replaced by MIL-STD-5400.
[3] Inactive for new design since 8 September 89; replaced by MIL-STD-2000.

MIL-STD-461C	Electromagnetic (EM) Emission and Susceptibility Requirements for the Control of EM Interference
MIL-STD-462	EM Interference Characteristics, Measurement of
MIL-STD-463A	Definitions and System of Units, EM Interference and EM Compatibility Technology
MIL-STD-469A	Radar Engineering Design Requirements, EM Compatibility
MIL-STD-470B	Maintainability Program for Systems and Equipment
MIL-STD-480B[4]	Configuration Control - Engineering Changes, Deviations and Waivers
MIL-STD-481B[4]	Configuration Control - Short Form
MIL-STD-482A[4]	Configuration Status Accounting Data Elements and Related Features
MIL-STD-483A[4]	Configuration Management Practices
MIL-STD-490A	Specification Practices
MIL-STD-499A[5]	Engineering Management
MIL-STD-781D	Reliability Testing for Engineering Development, Qualification, and Production
MIL-STD-785B	Reliability Program for Systems and Equipment Development and Production
MIL-STD-810E	Environmental Test Methods and Engineering Guidelines
MIL-STD-882B	System Safety Program Requirements
MIL-STD-883D	Test Methods and Procedures for Microelectronics
MIL-STD-980	Foreign Object Damage (FOD) Prevention in Aerospace Products
MIL-STD-1388-1A	Logistic Support Analysis
MIL-STD-1388-2B	DoD Requirements for a Logistic Support Analysis Record
MIL-STD-1456[4]	Configuration Management Plan
MIL-STD-1472D	Human Engineering Design Criteria for Military Systems, Equipment, and Facilities
MIL-STD-1520C	Corrective Action and Disposition System for Nonconforming Material
MIL-STD-1521B	Technical Reviews and Audits for Systems, Equipments, and Computer Software
MIL-STD-1535A	Supplier Quality Assurance Program Requirements
MIL-STD-1567A	Work Measurement
MIL-STD-1686A	Electrostatic Discharge Control Program for Protection of Electrical and Electronic Parts, Assemblies and Equipment (Excluding Electrically Initiated Explosive devices) (Metric)

[4] Canceled by MIL-STD-973, Configuration Management.
[5] Will be replaced by MIL-STD-499B, which is still in draft.

MIL-STD-2000A[6]	Standard Requirements for Soldered Electrical and Electronic Assemblies
MIL-STD-2073[7]	DoD Materiel, Procedures for Development and Application of Packaging Requirements
MIL-STD-2073-1B	DoD Materiel, Procedures for Development and Application of Packaging Requirements (Part 1 of (Part 1 of 2 Parts)
MIL-STD-2073-2C	Packaging Requirement Codes (Part 2 of 2 Parts)
MIL-STD-45662A	Calibration Systems Requirements

Handbooks

MIL-HDBK-50A	Evaluation of a Contractor's Quality Program
MIL-HDBK-245C	Preparation of Statement of Work (SOW)
MIL-HDBK-781	Reliability Test Methods, Plans, and Environments for Engineering Development, Qualification, and Production

[6]Not yet in wide use.
[7]Has been replaced by MIL-STD-2073-1.

APPENDIX D

Executive Orders & Statutes that have been Identified as Barriers to the Acquisition of Commercial Items by DoD

1. FAR 52.222-21: Certification of Nonsegregated Facilities (E.O. 11246)

2. FAR 52.222-24: Preaward On-Site Equal Opportunity Compliance Review (E.O. 11246)

3. FAR 52.222-28: Equal Opportunity Preaward Clearance of Subcontracts (E.O. 11246)

4. Department of Defense Appropriations Act, 1993 (P.L. 102-396)

5. DFARS 225.7002: Restrictions on Food, Clothing, Fabrics, and Specialty Metals (Berry Amendments)

6. Expenditures of Appropriations: Limitations (10 U.S.C. 2207)

7. FAR 52.226-1: Utilization of Indian Organizations and Indian Owned Econonmic Enterprises (10 U.S.C. 2301 note)

8. DFARS 252.219-7001: Notice of Partial Small Business Set-Aside with Preferential Consideration for Small Disadvantaged Business Concerns (10 U.S.C. 2301)

9. DFARS 252.219-7005: Incentive for Subcontracting with Small Businesses, Small Disadvantaged Businesses, Historically Black Colleges and Universities, and Minority Institutions (10 U.S.C. 2301)

10. DFARS 252.206-7000: Domestic Source Restriction (10 U.S.C. 2304)

11. Cost or Pricing Data: Truth in Negotiations (10 U.S.C. 2306a)

12. Covenant Against Contingent Fees (10 U.S.C. 2306(b) and 41 U.S.C. 254)

13. Examination of Books and Records of Contractor (10 U.S.C. 2313 and 41 U.S.C. 254)

14. Validation of Proprietary Data Restrictions (10 U.S.C. 2320 and 10 U.S.C. 2321)

15. Allowable Costs Under Defense Contracts (10 U.S.C. 2324)

16. DFARS 252.209-7001: Disclosure of Ownership or Control by a Foreign Government that Supports Terrorism (10 U.S.C. 2327)

17. Contracting with Suspended or Debarred Subcontractors (10 U.S.C. 2393(d), added by P.L. 101-510, S. 813)

18. DFARS 252.203-7000: Certain Former Department of Defense Procurement Officials: Limitations on Employment by Contractors (10 U.S.C. 2397 b and c)

19. Prohibition of Contractors Limiting Subcontractor Sales Directly to the United States (10 U.S.C. 2402)

20. DFARS 252.203-7001: Special Prohibition on Employment (10 U.S.C. 2408)

21. DFARS 252.203-7003: Prohibition Against Retaliatory Personnel Actions (10 U.S.C. 2409a)

22. DFARS 252.233-7000: Certification of Claims and Requests for Adjustment or Relief (10 U.S.C. 2410)

23. DFARS 252.205-7000: Provision of Information to Cooperative Agreement Holders (10 U.S.C. 2416)

24. DFARS 252.225-7017: Preference for United States and Canadian Valves and Machine Tools (10 U.S.C. 2506(d))

25. DFARS 252.225-7023: Restriction on Acquisition of Carbonyl Iron Powders (10 U.S.C. 2506(e))

26. DFARS 252.225-7029: Restriction on Acquisition of Air Circuit Breakers (10 U.S.C. 2506(f))

27. Supplies: Preference to United States Vessels (10 U.S.C. 2631)

28. DFARS 252.225-7027: Limitation on Sales Commissions and Fees (12 U.S.C. 2779)

29. Small Business Act (15 U.S.C. 637-644)

30. FAR 52.215-12: Restriction on Disclosure and Use of Data (18 U.S.C. 1905)

31. Certain Communist Areas (22 U.S.C. 2370)

32. Exclusionary Policies and Practices of Foreign Governments (22 U.S.C. 2755)

33. FAR 52.226-1: Utilization of Indian Organizations and Indian-Owned Economic Enterprises (25 U.S.C. 1544)

34. Taxpayer Identification (26 U.S.C. 6050m)

35. FAR 52.222-36: Affirmative Action for Hanidicapped Workers (29 U.S.C. 793 (a))

36. Limitation on Payments to Influence Certain Federal Transactions (31 U.S.C. 1352)

37. Prompt Payment Act (31 U.S.C. 3901-3907)

38. FAR 52.222-35: Affirmative Action for Special Disabled and Vietnam Era Veterans (38 U.S.C. 2012)

39. Warranty Exclusion and Limitation of Damages (FIRMR) (40 U.S.C. 759 "Brooks Act")

40. Trade Agreements Act and Balance of Payments Program (41 U.S.C. 10: Buy-American Act, and 19 U.S.C. 2501-2582)

    a. DFARS 252.225-7006: Buy American Act — Trade Agreements Act — Balance of Payments Program Certificate

    b. DFARS 252.225-7007: Trade Agreements Act

41. Officials Not to Benefit (41 U.S.C. 22, 18 U.S.C. 431 and 432)

42. Anti-Kickback procedures (41 U.S.C. 51-54)

43. Office of Federal Procurement Policy Act (41 U.S.C. 401-424)

44. Cost Accounting Standards (41 U.S.C. 422)

45. Contract Disputes Act (41 U.S.C. 601)

46. Drug-Free Workplace (41 U.S.C. 701)

47. Cargo Preference Act of 1954 (46 U.S.C. 1241(b))

48. Fly America Act (49 U.S.C. 1517)