(b) RECORDS.—The Institute is authorized to prescribe the keeping of records with respect to funds provided by any grant, cooperative agreement, or contract under this Act and shall have access to such records at all reasonable times for the purpose of ensuring compliance with such grant, cooperative agreement, or contract or the terms and conditions upon which financial assistance was provided.

(c) SUBMISSION OF COPIES OF REPORTS TO RECIPIENTS; MAINTENANCE IN PRINCIPAL OFFICE OF INSTITUTE; AVAILABILITY FOR PUBLIC INSPECTION; FURNISHING OF COPIES TO INTERESTED PARTIES.—Copies of all reports pertinent to the evaluation, inspection, or monitoring of any recipient shall be submitted on a timely basis to such recipient, and shall be maintained in the principal office of the Institute for a period of at least 5 years after such evaluation, inspection, or monitoring. Such reports shall be available for public inspection during regular business hours, and copies shall be furnished, upon request, to interested parties upon payment of such reasonable fees as the Institute may establish.

SEC. 16. AUDITS.

(a) TIME AND PLACE OF AUDITS; STANDARDS; AVAILABILITY OF BOOKS, ACCOUNTS, FACILITIES, ETC., TO AUDITORS; FILING OF REPORT AND AVAILABILITY FOR PUBLIC INSPECTION.—

(1) The accounts of the Institute shall be audited annually. Such audits shall be conducted in accordance with generally accepted auditing standards by independent certified public accountants who are certified by a regulatory authority of the jurisdiction in which the audit is undertaken.

(2) The audits shall be conducted at the place or places where the accounts of the Institute are normally kept. All books, accounts, financial records, reports, files, and other papers or property belonging to or in use by the Institute and necessary to facilitate the audits shall be made available to the person or persons conducting the audits. The full facilities for verifying transactions with the balances and securities held by depositories, fiscal agents, and custodians shall be afforded to any such person.

(3) The report of the annual audit shall be filed with the General Accounting Office and shall be available for public inspection during business hours at the principal office of the Institute.

(b) ADDITIONAL AUDITS; REQUIREMENTS; REPORTS AND RECOMMENDATIONS TO CONGRESS AND ATTORNEY GENERAL.—

(1) In addition to the annual audit, the financial transactions of the Institute for any fiscal year during which Federal funds are available to finance any portion of its operations may be audited by the General Accounting Office in accordance with such rules and regulations as may be prescribed by the Comptroller General of the United States.

(2) Any such audit shall be conducted at the place or places where accounts of the Institute are normally kept. The representatives of the General Accounting Office shall have access to all books, accounts, financial records, reports, files, and other papers or property belonging to or in use by the Institute and necessary to facilitate the audit. The full facilities for verifying transactions with the balances and securities held by depositories, fiscal agents, and custodians shall be afforded to such representatives. All such books, accounts, financial records, reports, files, and other papers or property of the Institute shall remain in the possession and custody of the Institute throughout the period beginning on the date such possession or custody commences and ending three years after such date, but the General Accounting Office may require the retention of such books, accounts, financial records, reports, files, and other papers or property for a longer period under section 3523(c) of title 31, United States Code.

(3) A report of such audit shall be made by the Comptroller General to the Congress and to the Attorney General, together with such recommendations with respect thereto as the Comptroller General deems advisable.

(c) ANNUAL AUDITS BY INSTITUTE OR RECIPIENTS; REPORTS; SUBMISSION OF COPIES TO COMPTROLLER GENERAL; INSPECTION OF BOOKS, ACCOUNTS, ETC.; AVAILABILITY OF AUDIT REPORTS FOR PUBLIC INSPECTION.—

(1) The Institute shall conduct, or require each recipient to provide for, an annual fiscal audit of the use of funds received under this Act. The report of each such audit shall be maintained for a period of at least 5 years at the principal office of the Institute.

(2) The Institute shall submit to the Comptroller General of the United States copies of such reports, and the Comptroller General may, in addition, inspect the books, accounts, financial records, files, and other papers or property belonging to or in use by such grantee, contractor, person, or entity, which relate to the disposition or use of funds received from the Institute. Such audit reports shall be available for public inspection during regular business hours, at the principal office of the Institute.

By Mr. KOHL (for himself and Mr. FEINGOLD):

S. 256. A bill to amend the Commodity Exchange Act to require the Commodity Futures Trading Commission to regulate certain cash markets, such as the National Cheese Exchange, until the Commission determines that the market do not establish reference points for other transactions, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

THE NATIONAL CHEESE EXCHANGE OVERSIGHT AND IMPROVEMENT ACT

● Mr. KOHL. Mr. President, I am introducing legislation to address a matter of great concern to all dairy farmers in the Nation—the lack of a credible milk-pricing system. Though there are many aspects of the milk-pricing system in need of reform, the legislation that I am introducing today seeks to address concerns about the potential for manipulation on the National Cheese Exchange [NCE] in Green Bay, WI, and the influence of the NCE on farmers' milk prices.

Last year, a 3-year study funded by USDA, and conducted by economists at the University of Wisconsin-Madison, highlighted the flaws of the National Cheese Exchange. Specifically, the report showed that although less than 1 percent of the nation's cheese is traded on the exchange, the price resulting from the exchange's weekly trading sessions acts as a reference price for nearly 95 percent of the commercial bulk cheese sales in the country. Further, the NCE price is also used by the U.S. Department of Agriculture as a factor in calculating the monthly minimum price that farmers receive for their milk.

The report raised serious concerns about the appropriateness of allowing a market that is as thinly traded, highly concentrated, unregulated, and subject to manipulation as the NCE to have such extreme influence over farmers' milk checks and national cheese prices.

Since the report was released, a great deal of time has been devoted to a discussion of whether certain companies or cooperatives have intentionally manipulated the exchange. I personally asked the Department of Justice and the Federal Trade Commission to review the report, to determine if any antitrust laws had been violated. While I am not convinced that either agency gave much attention to the matter, both replied that they saw no sign of illegality in the activities by large traders on the NCE.

While these questions of legality and manipulation are valid, they are questions that may never be resolved to anyone's satisfaction. Ultimately what I believe to be the most important exercise is to find a market that will be more reflective of supply and demand, and to eliminate any potential for manipulation in price discovery. Farmers and consumers alike deserve to know that markets are fair and aboveboard.

With that goal in mind, my colleagues from Wisconsin, Senator FEINGOLD and Congressman OBEY, and I have worked continuously on several initiatives to create and promote alternative price discovery mechanisms, and to urge Federal and State regulatory agencies to exercise any authorities they might have to oversee the operations of the exchange.

NEED FOR AN ALTERNATIVE CASH MARKET FOR CHEESE

With regard to the possible establishment of alternative cash markets for cheese, several months ago, Senator FEINGOLD and I asked the Coffee, Sugar, and Cocoa Exchange [CSCE] to explore the possibility of establishing such an alternative. The CSCE, which already trades futures contracts for cheese, is regulated by the U.S. Commodity Futures Trading Commission, and imposes strict self-regulatory guidelines on its traders as well.

Further, there is some hope that the establishment of cash market for cheese on the CSCE, and the more direct connection to the existing cheese futures trading business, would lead to an increased volume of trading on both the cash and futures markets for cheese.

I have been very pleased to see that the CSCE is seriously considering our proposal, and is actively exploring the possibility of creating a cash market for cheese in the near term. While there is no guarantee that such a market will be successful, it is my hope that the CSCE leadership will opt to establish such a market, and will establish and enforce guidelines to assure that the new market does not merely mimic the flaws of the National Cheese Exchange.

However, even if the CSCE decides to establish an alternative market for

cheese, it will be some time before the influence of the National Cheese Exchange over farmers' milk prices and national cheese prices is diminished. Therefore, I have tried to deal with that problem directly and immediately.

EFFORTS TO REDUCE THE INFLUENCE OF THE NCE ON FARMERS' MILK PRICES

First, since I believe that it is inappropriate for an unregulated and thinly traded market like the NCE to be used in setting farmers' milk prices, I and other members of the Wisconsin congressional delegation have asked Secretary Glickman to delink the NCE from the calculation of the basic formula price [BFP]. Therefore, I was very pleased last week when Secretary Glickman announced a 60-day comment period to solicit comments about whether to delink the NCE from the calculation of the BFP. I am hopeful that this process will free farmers' milk checks from the direct connection to NCE within a few short months.

But even if the Secretary decides to eliminate the direct link between the NCE price and the basic formula price, farmers' milk prices will still be indirectly linked to the NCE, as long as industry leaders continue to use the NCE as a reference price for forward contracts for bulk cheese. Since cheese is such a dominant end product for milk, especially in Wisconsin, as long as cheese prices are set off the NCE, the NCE will be remain a major factor in milk prices.

That is why, in the long term, I believe the creation of an alternative market for cheese, which could become the new reference price for bulk cheese contracts, will be in the best interest of farmers, consumers, and cheese manufacturers.

However, until that happens, we must continue in the efforts to fix some of the flaws of the National Cheese Exchange. And it is with that purpose that I am introducing the National Cheese Exchange Oversight and Improvement Act, to require the U.S. Commodity Futures Trading Commission to oversee the activities of the NCE.

LEGISLATION NEEDED TO REQUIRE FEDERAL REGULATORY OVERSIGHT OF THE NCE

In October of 1996, Senator FEINGOLD, Congressman OBEY, and I wrote to the CFTC to urge them to oversee the activities of the National Cheese Exchange. This month, we received a response letter explaining that the CFTC, as a futures market regulatory agency, has very limited authority over cash markets. In the letter, CFTC Acting Director Theodore C. Barreaux states,

The Commodity Exchange Act does not provide the CFTC with regulatory jurisdiction over the day-to-day operations of cash commodity markets * * * The Commodity Exchange Act does confer on the CFTC the authority to investigate possible manipulation of cash markets and to impose sanctions based on its findings, if appropriate. Historically, given the Commission's principal regulatory responsibility over futures and options markets and its relatively limited resources, the CFTC has focused its investigative attention on cash market activity that involves possible adverse impact on one or more of the numerous futures and option markets which it regulates.

However, it seems very likely that the industrywide concern about the lack of viability of the cash market for cheese, is a direct factor in the reluctance of the industry to participate more fully in the trading of futures contracts for cheese on the CSCE. Therefore, I believe that the NCE does have a more direct nexus with the futures market than the CFTC is acknowledging.

However, accepting CFTC's claim that it lacks the necessary authority to oversee or regulate the NCE, this legislation is intended to give the Commission the explicit authority to do so, at least until the Commission determines that the NCE is no longer acting as a reference price for commercial sales of bulk cheese of the NCE.

While I understand the concern of the Commission that requiring CFTC regulation of cash markets would open a Pandora's box of new work for the Commission, the bill has been written in a very narrow manner, so as only to require regulation of the NCE, or other concentrated cash markets that share the specific flaws of the NCE.

I believe there are certain circumstances where a cash market has such great influence over national prices, and is so subject to manipulation, that it needs to be regulated. And the cheese exchange is perhaps the best example of that.

When you have a cash market that is very thinly traded, completely unregulated, and used as a reference price for both raw product prices paid to farmers and commercial end product sales, something must be done to bring some credibility to the market.

It is my hope that this legislation could be attached as an amendment to the Commodity Exchange Act reauthorization, which is on the Senate Agriculture Committee agenda for early action this year. I look forward to working with Chairman LUGAR, Senator HARKIN, and the other members of the committee to assure that the necessary Federal oversight of the NCE is put in place.

Further, I welcome my colleague Senator FEINGOLD as an original cosponsor of this legislation, and thank Congressman OBEY and other members of the Wisconsin House delegation for introducing companion legislation in the House today as well. It is very gratifying that the Wisconsin delegation is working cooperatively and constructively in advancing these necessary dairy pricing reforms.

In that regard, I am also pleased to be an original cosponsor of the Milk Price Discovery Improvement Act of 1997, as introduced today by Senator FEINGOLD. This legislation will make the U.S. Department of Agriculture an equal partner in the NCE reform efforts by: First, requiring USDA to delink the NCE opinion price from the USDA basic formula price [BFP], which establishes minimum milk prices paid to farmers; second, requires USDA to take steps to improve price discovery for cheese, in order to reduce the influence of the NCE on farmers' milk prices; and third, requires USDA to prohibit competitive practices on any cash market that may affect milk prices regulated under Federal milk marketing orders.

While my legislation requires CFTC oversight of the NCE and its day-to-day rules of operation, Senator FEINGOLD's legislation requires USDA authority to prohibit anticompetitive actions by traders on the NCE. These two roles are entirely compatible and complementary.

Mr. President, I ask unanimous consent that the bill summary, and the full text of the bill, be included in the RECORD.

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

S. 256

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''National Cheese Exchange Oversight and Improvement Act of 1997''.

SEC. 2. FINDINGS.

The Congress finds that the operation of the National Cheese Exchange and other cash markets is of national concern and in need of Federal oversight because of the following:

(1) The National Cheese Exchange, located in Green Bay, Wisconsin, is the dominant cash market for bulk cheese in the United States.

(2) While less than 1 percent of the cheese produced in the United States is sold on the National Cheese Exchange, the price determined by the National Cheese Exchange acts as a reference price for as much as 95 percent of the commercial cheese transactions conducted in the United States.

(3) A three-year federally funded investigation into the activities of the National Cheese Exchange determined that the National Cheese Exchange is very thinly traded, highly concentrated, completely unregulated, and subject to manipulation.

(4) The Coffee, Sugar, and Cocoa Exchange in New York, an exchange regulated by the Commodity Futures Trading Commission, trades futures contracts for cheese.

(5) The low volume in trading of cheese futures contracts on the Coffee, Sugar, and Cocoa Exchange is partially related to concerns about the lack of viability, and potential for manipulation, in the dominant cash market for cheese, the National Cheese Exchange.

(6) The National Cheese Exchange is completely unregulated by any Federal or State agency.

(7) The Commodity Futures Trading Commission claims a lack of authority to regulate or oversee the National Cheese Exchange and similar cash markets.

SEC. 3. COMMODITY FUTURES TRADING COMMISSION REGULATION OF NATIONAL CHEESE EXCHANGE AND SIMILAR CASH MARKETS.

The Commodity Exchange Act (7 U.S.C. 1 et seq.) is amended by inserting after section 20 (7 U.S.C. 24) the following new section:

"SEC. 21. COMMISSION REGULATION OF NATIONAL CHEESE EXCHANGE AND SIMILAR CASH MARKETS.

''(a) DEFINITION OF CONCENTRATED CASH MARKET.—In this section, the term 'concentrated cash market' means—

''(1) the National Cheese Exchange located in Green Bay, Wisconsin; and

''(2) a cash market for a commodity if the Commission determines that—

''(A) the cash market is geographically centralized in the form of a market or exchange;

''(B) the cash market is very thinly traded or highly illiquid;

''(C) the price established by the cash market functions as a reference price for a majority of commercial transactions off the cash market for the commodity being traded;

''(D) trading in the cash market is concentrated among relatively few buyers and sellers;

''(E) the cash market is substantially unregulated by any other regulatory structure (including State regulation or self-regulation);

''(F) a futures market regulated under this Act also exists for the commodity that is being traded on the cash market; and

''(G) the instability, illiquidity, or potential for manipulation for on the cash market could be a deterrent to the use of the futures market for that commodity.

''(b) REGULATION OF CONCENTRATED CASH MARKETS.—In consultation with the Secretary of Agriculture, the Commission shall regulate a concentrated cash market under this Act until such time as the Commission determines that the concentrated cash market is not functioning as a reference price for a majority of commercial transactions off the cash market for the commodity being traded on the concentrated cash market.

''(c) SUBMISSION AND REVIEW OF OPERATING RULES.—The Commission shall require a cash market that is subject to this section to:

''(1) SUBMISSION REQUIRED.—The Commission shall require a concentrated cash market subject to regulation under subsection (b) to submit to the Commission for approval a set of rules governing the operation of the concentrated cash market; and

''(2) TIME FOR SUBMISSION.—In the case of the National Cheese Exchange, the operating rules required under this subsection shall be submitted not later than 90 days after the date of enactment of this section. In the case of other concentrated cash markets, the operating rules shall be submitted not later than 90 days after the date on which the Commission notifies the concentrated cash market that it is subject to regulation under this section.

''(3) NOTIFICATION OF COMMISSION ACTION.—The Commission shall promptly review operating rules submitted by a concentrated cash market under this subsection to determine whether the rules are sufficient to govern the operation of the concentrated cash market. Not later than 60 days after receiving the rules from a concentrated cash market, the Commission shall notify the concentrated cash market of the result of the review, including whether the rules are approved or disapproved. If disapproved, the Commission shall provide such recommendations regarding changes to the rules as the Commission considers necessary to secure approval and provide a schedule for resubmission of the rules.

''(4) SUBSEQUENT RULE CHANGES.—A concentrated cash market may not change approved operating rules unless the proposed change is also submitted to the Commission for review and the Commission approves the change in the manner provided in paragraph (3).

''(d) EFFECT OF FAILURE TO SUBMIT OR RECEIVE APPROVAL OF RULES.—Beginning one year after the date of the enactment of this section, the National Cheese Exchange may operate only in accordance with rules approved by the Commission under subsection (c). In the case of other concentrated cash markets, beginning one year after the date on which the concentrated cash market is notified that it is subject to regulation under this section, the concentrated cash market may operate only in accordance with rules approved by the Commission under subsection (c).''.

SUMMARY OF THE BILL

Amends the Commodity Exchange Act, to require the Commodity Futures Trading Commission (CFTC) to regulate the National Cheese Exchange (NCE), in consultation with USDA, until such time as the NCE is no longer used as a reference price for the majority of commercial cheese sales off the exchange.

Require the NCE (or any other cash market regulated by the CFTC as a result of this bill) to submit to the CFTC for approval a set of rules of operation, and to enforce those rules.

Further, the bill would give the CFTC authority to regulate other cash markets, if the conditions similar to those on the NCE were to occur on another cash market. Specifically, CFTC would be required to regulate a cash market when the following conditions coincide:

Trading is geographically centralized.

The cash market is very thinly traded or highly illiquid.

The price established by the market or exchange acts as a reference price for a majority of commercial transactions off the market.

The market is concentrated among relatively few buyers and sellers.

The market is substantially unregulated by any other regulatory structure (included state regulation or regulation by the market itself).

Manipulation on the cash market is a deterrent to the use of the futures market for the same commodity.●

By Mr. LUGAR (for himself, Mr. HARKIN, and Mr. LEAHY):

S. 257. A bill to amend the Commodity Exchange Act to improve the act, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

THE COMMODITY EXCHANGE ACT AMENDMENTS OF 1997

Mr. LUGAR. Mr. President, today I am introducing, along with Senators HARKIN and LEAHY, legislation to amend the Commodity Exchange Act. This bill is very similar to S. 2077, which Senator LEAHY and I introduced last September after several months of hearings and informal consultations with industry, academics, and regulators. The legislation streamlines U.S. futures trading law, conforming it to changing competitive realities.

In many ways, regulation has benefited the U.S. futures industry. Prudent regulation enhances customer protection, prevents and punishes fraud and other abuses, and makes futures markets better able to provide risk management, price discovery, and investment opportunity.

Regulation, however, also has its costs. U.S. futures markets face competition that is, in some cases, less regulated or differently regulated. In the years ahead, our challenge is to balance the need for adequate regulation with the need to offer cost-competitive products.

This bill tries to strike such a balance. It requires the Commodity Futures Trading Commission to consider the costs for industry of the regulations it imposes. The bill streamlines the process of introducing new futures contracts, reducing the time that is required to begin trading these new products. It makes similar reforms to the process by which exchanges' rules are reviewed by the CFTC.

Where additional authority for the CFTC is needed, the bill provides it. The CFTC will have the authority to require U.S. delivery points for overseas futures markets to provide information that is also regularly demanded of American market participants. This is eminently reasonable, and may assist the CFTC and other regulators in the future if situations similar to the 1996 London copper market scandal recur.

The bill will also provide greater legal certainty for swaps, over-the-counter products that are of increasing importance to many businesses. It is important that these contracts' enforceability be made more certain, so that legal risk does not compound the other risks inherent in any financial transaction. In one important addition to last year's legislation, the new bill will also provide this legal certainty for swaps that are based on equities, as well as for hybrid instruments. In a more limited way, the bill will establish the terms of exemptions for on-exchange products traded solely among professional investors.

Another addition to last year's legislation is a major rewrite of the so-called Treasury amendment, a provision of the Commodity Exchange Act that excludes some financial products from its regulatory coverage. This controversial section is at best unclear, and needs a fresh look from Congress. I hope the proposals we have made in this bill—which are explained in a discussion document I will mention in a moment—will both stimulate dialog and find wide acceptance.

It is unfortunate that the CFTC and the Treasury Department, which discussed this subject at Senator LEAHY's and my request, were unable to agree on a common approach. However, the committee will work with both agencies as we move forward. Despite some differences in drafting, I believe the Treasury Department's ideas are basically consistent with what Senators HARKIN, LEAHY, and I have proposed. The Treasury did not propose, as we do, to allow futures exchanges to create professionals-only markets in Treasury amendment products. However, Senator HARKIN and I are informed that while the Treasury is still studying

this proposal, in principle the Department does not object to treating exchange affiliates in a manner similar to other sophisticated market participants.

The bill contains a number of other provisions. Senator HARKIN and I have prepared a section-by-section discussion document, which may be helpful to our colleagues.

On February 11 and 13, the committee will hold hearings on this legislation. It is a priority for the committee during the coming weeks and months.

I would like to thank Senator HARKIN for his extraordinary cooperation in putting this bill together. As the new ranking member of the committee, he has been gracious and collegial. Likewise, Senator LEAHY's efforts both last year and this year deserve special praise. I salute them both for their leadership.

Mr. President, I ask unanimous consent that the bill and additional material be printed in the RECORD.

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

S. 257

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Commodity Exchange Amendments Act of 1997''.

SEC. 2. TREASURY AMENDMENT.

Section 2(a)(1)(A) of the Commodity Exchange Act (7 U.S.C. 2) is amended by striking clause (ii) and inserting the following:

''(ii) TREASURY AMENDMENT.—

''(I) IN GENERAL.—Nothing in this Act shall be deemed to govern or in any way be applicable to transactions in or involving foreign currency, security warrants, security rights, resales of installment loan contracts, repurchase options, government securities, or mortgages and mortgage purchase commitments, unless such transactions involve the sale thereof to the general public for future delivery conducted on a board of trade.

''(II) OTHER AGENCIES.—Nothing in subclause (I) shall affect the powers of the Securities and Exchange Commission, the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Department of the Treasury, the Federal Deposit Insurance Corporation, any agency of State government with the authority to charter, regulate, or license banks, or any State insurance regulatory agency, under this Act or any other provision of law.

''(III) DEFINITIONS.—

''(aa) BOARD OF TRADE; FOREIGN EXCHANGE TRANSACTIONS.—The term 'board of trade', as applied to foreign exchange transactions described in subclause (I), shall include unsupervised entities that are engaged in the systematic marketing of standardized, non-negotiable foreign currency transactions to retail investors.

''(bb) BOARD OF TRADE; GOVERNMENT SECURITIES.—The term 'board of trade', as used in subclause (I), shall not include a government securities dealer or government securities broker, to the extent the dealer or broker engage in transactions in government securities, as the terms 'government securities', 'government securities dealer', and 'government securities broker' are defined in section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)).

''(cc) GENERAL PUBLIC; RETAIL INVESTORS.—The Commission shall define the terms 'general public' as used in subclause (I) and 'retail investors' as used in item (aa), taking into account, to the extent practicable, section 4(c)(3) of this Act and section 35(b)(2) of title 17, Code of Federal Regulations. In carrying out the preceding sentence, the Commission shall not include in the definition of 'retail investors' a natural person with total assets that exceeds $10,000,000.

''(dd) OPTION.—For purposes of this clause, an 'option' shall be considered to be a transaction at the time it is purchased or sold and at the time, if any, that it is exercised.

''(IV) EMERGENCY AUTHORITY.—Nothing in this clause shall restrict the powers of the Commission under section 8a(9) as they apply to designated contract markets.''.

SEC. 3. HEDGING.

Section 3 of the Commodity Exchange Act (7 U.S.C. 5) is amended in the fourth sentence by striking ''through fluctuations in price''.

SEC. 4. DELIVERY POINTS FOR FOREIGN FUTURES CONTRACTS.

Section 4(b) of the Commodity Exchange Act (7 U.S.C. 6(b)) is amended—

(1) in the third sentence—

(A) by striking ''(1)'' and ''(2)'' and inserting ''(A)'' and ''(B)'', respectively; and

(B) by striking ''No rule'' and inserting ''Except as provided in paragraph (2), no rule'';

(2) by inserting ''(1)'' after ''(b)''; and

(3) by adding at the end the following:

''(2)(A) The Commission shall consult with a foreign government, foreign futures authority, or department, agency, governmental body, or regulatory organization empowered by a foreign government to regulate a board of trade, exchange, or market located outside the United States, or a territory or possession of the United States, that has 1 or more established delivery points in the United States, or a territory or possession of the United States, for a contract of sale of a commodity for future delivery that is made or will be made on or subject to the rules of the board of trade, exchange, or market.

''(B) In the consultations, the Commission shall endeavor to secure adequate assurances, through memoranda of understanding or any other means the Commission considers appropriate, that the presence of the delivery points will not create the potential for manipulation of the price, or any other disruption in trading, of a contract of sale of a commodity for future delivery traded on or subject to the rules of a contract market, or a commodity, in interstate commerce.

''(C) Any warehouse or other facility housing an established delivery point in the United States, or a territory or possession of the United States, described in subparagraph (A) shall—

''(i) keep books, records, and other information specified by the Commission pertaining to all transactions and positions in all contracts made or carried on the foreign board of trade, exchange, or market in such form and manner and for such period as may be required by the Commission;

''(ii) file such reports regarding the transactions and positions with the Commission as the Commission may specify; and

''(iii) keep the books and records open to inspection by a representative of the Commission or the United States Department of Justice.''.

SEC. 5. EXEMPTION AUTHORITIES.

Section 4 of the Commodity Exchange Act (7 U.S.C. 6(c)) is amended by adding at the end the following:

''(e) PRIVATE TRANSACTION EXEMPTION.—

''(1) IN GENERAL.—Notwithstanding subsection (c)(1), to the extent, if any, that an agreement, contract, or transaction (or class thereof) is otherwise subject to this Act, it shall be exempt from all provisions of this Act and any person or class of persons offering, entering into, rendering advice, or rendering other services with respect to the agreement, contract, or transaction (or class thereof), shall be exempt for the activity from all provisions of this Act (except in each case the provisions of sections 4b and 4o, any antifraud provision adopted by the Commission pursuant to section 4c(b), and the provisions of section 6(c) and 9(a)(2) to the extent the provisions prohibit manipulation of the market price of any commodity in interstate commerce for future delivery on or subject to the rules of any contract market) if—

''(A) the agreement, contract, or transaction (or class thereof) is entered into only between appropriate persons at the time the persons enter into the agreement, contract, or transaction (or class thereof);

''(B) the agreement, contract, or transaction (or class thereof) is not part of a fungible class of agreements, contracts, or transactions that are standardized as to their material economic terms;

''(C) the creditworthiness of any party having an actual or potential obligation under the agreement, contract, or transaction (or class thereof) would be a material consideration in entering into or determining the terms of the agreement, contract, or transaction (or class thereof), including pricing, cost, or credit enhancement terms of the agreement, contract, or transaction (or class thereof); and

''(D) the agreement, contract, or transaction (or class thereof) is not entered into and traded on or through a multilateral transaction execution facility.

''(2) EXCEPTIONS.—Paragraph (1) shall not preclude—

''(A) arrangements or facilities between parties to an agreement, contract, or transaction (or class thereof) that provide for netting of payment obligations resulting from the agreement, contract, or transaction (or class thereof);

''(B) arrangements or facilities among parties to an agreement, contract, or transaction (or class thereof) that provide for netting of payments resulting from the agreement, contract or transaction (or class thereof); or

''(C) the prohibition of transactions covered under section 32.2 of title 17, Code of Federal Regulations.

''(3) DEFINITION OF APPROPRIATE PERSON.—In paragraph (1), the term 'appropriate person' means—

''(A) a person (as defined in subsection (c)(3)); or

''(B) a natural person whose total assets exceed $10,000,000.

''(4) HYBRID INSTRUMENT EXEMPTION.—

''(A) DEFINITIONS.—In this paragraph:

''(i) COMMODITY-DEPENDENT COMPONENT.—The term 'commodity-dependent component' means a component of a hybrid instrument, the payment of which results from indexing to, or calculation by reference to, the price of a commodity.

''(ii) COMMODITY-DEPENDENT VALUE.—The term 'commodity-dependent value' means the value of a commodity-dependent component, which when decomposed into an option payout or payouts, is measured by the absolute net value of the put option premia with strike prices less than or equal to the reference price plus the absolute net value of the call option premia with strike prices greater than or equal to the reference price, calculated as of the time of issuance of the hybrid instrument.

''(iii) COMMODITY-INDEPENDENT COMPONENT.—The term 'commodity-independent component' means the component of a hybrid instrument, the payments of which do

not result from indexing to, or calculation by reference to, the price of a commodity.

''(iv) COMMODITY-INDEPENDENT VALUE.—The term 'commodity-independent value' means the present value of the payments attributable to the commodity-independent component calculated as of the time of issuance of the hybrid instrument.

''(v) HYBRID INSTRUMENT.—The term 'hybrid instrument' means an equity or debt security or depository instrument with 1 or more commodity-dependent components that have payment features similar to commodity futures or commodity option contracts or combinations thereof.

''(vi) OPTION PREMIUM.—The term 'option premium' means the value of an option on the referenced commodity of the hybrid instrument, calculated by using—

''(I) the same method as that used to determine the issue price of the instrument; or

''(II) a commercially reasonable method appropriate to the instrument being priced where the premia are not explicitly calculated in determining the issue price of the instrument.

''(vii) REFERENCE PRICE.—The term 'reference price' means a price nearest the current spot or forward price, whichever is used to price the instrument, at which a commodity-dependent payment becomes non-zero, or, in the case in which 2 potential reference prices exist, the price that results in the greatest commodity-dependent value.

''(B) EXEMPTION.—Notwithstanding subsection (c)(1), a hybrid instrument is exempt from all provisions of this Act, and any person or class of persons offering, entering into, or rendering advice or other services with respect to the hybrid instrument is exempt for such activity from all provisions of this Act, if the following terms and conditions are satisfied:

''(i) The instrument is—

''(I) an equity or debt security (within the meaning of section 2(1) of the Securities Act of 1933 (15 U.S.C. 77b); or

''(II) a demand deposit, time deposit or transaction account within the meaning of subsections (b)(1),(c)(l), and (e) of section 204.2 of title 12, Code of Federal Regulations, respectively, that are offered by—

''(aa) an insured depository institution (as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813));

''(bb) an insured credit union (as defined in section 101 of the Federal Credit Union Act (12 U.S.C. 1752)); or

''(cc) a Federal or State branch or agency of a foreign bank (as defined in section 1 of the International Banking Act of 1978 (12 U.S.C. 3101)).

''(ii) The sum of the commodity-dependent values of the commodity-dependent components is less than the commodity-independent value of the commodity-independent component.

''(iii) Provided that—

''(I) an issuer must receive full payment of the purchase price of the hybrid instrument, and a purchaser or holder of a hybrid instrument may not be required to make additional out-of-pocket payments to the issuer during the life of the instrument or at maturity;

''(II) the instrument is not marketed as a futures contract or a commodity option or, except to the extent necessary to describe the functioning of the instrument or to comply with applicable disclosure requirements, as having the characteristics of a futures contract or a commodity option; and

''(III) the instrument does not provide for settlement in the form of a delivery instrument that is specified as such in the rules of a designated contract market.

''(iv) The instrument is initially issued or sold subject to applicable Federal or State securities or banking laws to persons who are permitted under the laws to purchase or enter into the hybrid instrument.

''(C) PROVISION NOT EXEMPTED.—The prohibition of transactions covered under section 32.2 of title 17, Code of Federal Regulations, shall apply to a hybrid instrument under this paragraph.

''(5) APPLICATION OF EXEMPTIONS.—Subsection (c) shall not restrict the authority of the Commission to grant an exemption under this subsection that is in addition to or independent of an exemption provided under paragraph (1) or (4). An exemption provided under subsection (c) may not be applied in a manner that restricts the exemption provided under either paragraph (1) or (4).

''(6) EXEMPTION BY COMMISSION.—

''(A) IN GENERAL.—The Commission may exempt an agreement, contract, or transaction (or class thereof), or a hybrid instrument under this subsection, to the extent that the agreement, contract, or transaction (or class thereof), or hybrid instrument, may be subject to this Act.

''(B) NO PRESUMPTION CREATED.—An exemption under this subsection shall not create a presumption that the exempted agreement, contract, or transaction (or class thereof), or hybrid instrument, is subject to this Act.''.

SEC. 6. EXEMPTION FOR PROFESSIONAL MARKETS.

Section 4 of the Commodity Exchange Act (7 U.S.C. 6) (as amended by section 5) is amended by adding at the end the following:

''(f) EXEMPTION FOR PROFESSIONAL MARKETS.—

''(1) DEFINITIONS.—In this subsection:

''(A) APPROPRIATE PERSON.—The term 'appropriate person' means—

''(i) a person (as defined in subsection (c)(3)); or

''(ii) a natural person whose total assets exceed $10,000,000.

''(B) PROFESSIONAL MARKET.—The term 'professional market' means a market—

''(i) that is traded on a board of trade that is otherwise designated by the Commission as a contract market; and

''(ii) on which only an appropriate person (as defined in subparagraph (A)) may enter into an agreement, contract, or transaction (or class thereof) on the market.

''(2) EXEMPTION.—

''(A) IN GENERAL.—An agreement, contract, or transaction (or class thereof) that is traded on a professional market and is, or may be, subject to this Act shall be exempt from this Act.

''(B) CONTRACTS NOT EXEMPTED.—The exemption provided under subparagraph (A) shall not apply to—

''(i) any individual agreement, contract, or transaction that has been transacted for the product involved as of the effective date of this subsection; or

''(ii) an agreement, contract, or transaction (or class thereof) that involves an agricultural commodity referred to in section 1a.

''(3) APPLICABILITY OF CERTAIN PROVISIONS.—An agreement, contract, or transaction (or class thereof) for which an exemption is provided under paragraph (2)(A), shall, to the extent applicable, in each case be subject to—

''(A) sections 2(a)(1)(B), 4b, and 4o;

''(B) the provisions of sections 6(c) and 9(a)(2) to the extent the provisions prohibit manipulation of the market price of any commodity in interstate commerce for future delivery on or subject to the rules of a contract market;

''(C) prohibitions adopted by the Commission against fraud or manipulation under section 4c(b); and

''(D) the powers of the Commission to respond to emergencies as provided in section 8a(9).''.

SEC. 7. CONTRACT DESIGNATION.

(a) IN GENERAL.—Section 5 of the Commodity Exchange Act (7 U.S.C. 7) is amended—

(1) by striking the matter preceding paragraph (1) and inserting the following:

''SEC. 5. DESIGNATION OF A BOARD OF TRADE AS A CONTRACT MARKET.

''(a) IN GENERAL.—The Commission shall designate a board of trade as a contract market if the board of trade complies with and carries out the following conditions and requirements:'';

(2) by striking paragraph (7);

(3) by redesignating paragraph (8) as paragraph (7); and

(4) by adding at the end the following:

''(b) EXISTING AND FUTURE DESIGNATIONS.—

''(1) IN GENERAL.—If a board of trade is designated as a contract market by the Commission under subsection (a) and section 6, the board of trade shall retain the designation for all existing or future contracts, unless the Commission suspends or revokes the designation or the board of trade relinquishes the designation.

''(2) EXISTING DESIGNATIONS.—A board of trade that has been designated as a contract market as of the date of enactment of this subsection shall retain the designation unless the Commission finds that a violation of this Act or a rule, regulation, or order of the Commission by the contract market justifies suspension or revocation of the designation under section 6(b), or the board of trade relinquishes the designation.

''(c) NEW CONTRACT SUBMISSIONS.—Except as provided in subsection (e), a board of trade that has been designated as a contract market under subsection (a) shall submit to the Commission all rules that establish the terms and conditions of a new contract of sale in accordance with subsection (d) (referred to in this section as a 'new contract'), other than a rule relating to the setting of levels of margin and other rules that the Commission may specify by regulation.

''(d) PROCEDURES FOR NEW CONTRACTS.—

''(1) REQUIRED SUBMISSION TO COMMISSION.—Except as provided in subsection (e), a contract market shall submit new contracts to the Commission in accordance with subsection (c).

''(2) EFFECTIVENESS OF NEW CONTRACTS.—A contract market may make effective a new contract and may implement trading in the new contract—

''(A) not earlier than 10 business days after the receipt of the new contract by the Commission; or

''(B) earlier if authorized by the Commission by rule, regulation, order, or written notice.

''(3) NOTICE TO CONTRACT MARKET.—The new contract shall become effective and may be traded on the contract market, unless, within the 10-business-day period beginning on the date of the receipt of the new contract by the Commission, the Commission notifies the contract market in writing—

''(A) of the determination of the Commission that the proposed new contract appears to—

''(i) violate a specific provision of this Act (including paragraphs (1) through (7) of section 5(a)) or a rule, regulation, or order of the Commission; or

''(ii) be contrary to the public interest; and

''(B) that the Commission intends to review the new contract.

''(4) NOTICE IN THE FEDERAL REGISTER.—Notwithstanding the determination of the Commission to review a new contract under paragraph (3) and except as provided in subsection (e), the contract market may make

the new contract effective, and may implement trading in the new contract, on a date that is not earlier than 15 business days after the determination of the Commission to review the new contract unless within the period of 15 business days the Commission institutes proceedings to disapprove the new contract by providing notice in the Federal Register of the information required under paragraph (5)(A).

''(5) DISAPPROVAL PROCEEDINGS.—

''(A) NOTICE OF PROPOSED VIOLATIONS.—If the Commission institutes proceedings to determine whether to disapprove a new contract under this subsection, the Commission shall provide the contract market with written notice, including an explanation and analysis of the substantive basis for the proposed grounds for disapproval, of what the Commission has reason to believe are the grounds for disapproval, including, as applicable—

''(i) the 1 or more specific provisions of this Act or a rule, regulation, or order of the Commission that the Commission has reason to believe the new contract violates or, if the new contract became effective, would violate; or

''(ii) the 1 or more specific public interests to which the Commission has reason to believe the new contract is contrary, or if the new contract became effective would be contrary.

''(B) DISAPPROVAL PROCEEDINGS AND DETERMINATION.—

''(i) OPPORTUNITY TO PARTICIPATE; HEARING.—Before deciding to disapprove a new contract, the Commission shall give interested persons (including the board of trade) an opportunity to participate in the disapproval proceedings through the submission of written data, views, or arguments following appropriate notice and an opportunity for a hearing on the record before the Commission.

''(ii) DETERMINATION OF DISAPPROVAL.—At the conclusion of the disapproval proceeding, the Commission shall determine whether to disapprove the new contract.

''(iii) GROUNDS FOR DISAPPROVAL.—The Commission shall disapprove the new contract if the Commission determines that the new contract—

''(I) violates this Act or a rule, regulation, or order of the Commission; or

''(II) is contrary to public interest.

''(iv) SPECIFICATIONS FOR DISAPPROVAL.—Each disapproval determination shall specify, as applicable—

''(I) the 1 or more specific provisions of this Act or a rule, regulation, or order of the Commission, that the Commission determines the new contract violates or, if the new contract became effective, would violate; or

''(II) the 1 or more specific public interests to which the Commission determines the new contract is contrary, or if the new contract became effective would be contrary.

''(C) FAILURE TO TIMELY COMPLETE DISAPPROVAL DETERMINATION.—If the Commission does not conclude a disapproval proceeding as provided in subparagraph (B) for a new contract by the date that is 120 calendar days after the Commission institutes the proceeding, the new contract may be made effective, and trading in the new contract may be implemented, by the contract market until such time as the Commission disapproves the new contract in accordance with this paragraph.

''(D) APPEALS.—A board of trade that has been subject to disapproval of a new contract by the Commission under this subsection shall have the right to an appeal of the disapproval to the court of appeals as provided in section 6(b).

''(6) CONTRACT MARKET DEEMED DESIGNATED.—A board of trade shall be deemed to be designated a contract market for a new contract of sale for future delivery when the new contract becomes effective and trading in the new contract begins.

''(e) REQUIRED INTERAGENCY REVIEW.—Notwithstanding subsection (d), no board of trade may make effective a new contract (or option on the contract) that is subject to the requirements and procedures of clauses (ii) through (v) of paragraph (1)(B), and paragraph (8)(B)(ii), of section 2(a) until the requirements and procedures are satisfied and carried out.''.

(b) CONFORMING AMENDMENT.—Section 6(a) of the Commodity Exchange Act (7 U.S.C. 8(a)) is amended in the first sentence by striking ''Any board of trade desiring'' and inserting ''A board of trade that has not obtained any designation as a contract market for a contract of sale for a commodity under section 5 that desires''.

SEC. 8. DELIVERY BY FEDERALLY LICENSED WAREHOUSES.

Section 5a(a) of the Commodity Exchange Act (7 U.S.C. 7a(a)) is amended by striking paragraph (7) and inserting the following:

''(7) Repealed;''.

SEC. 9. SUBMISSION OF RULES TO COMMISSION.

Section 5a(a) of the Commodity Exchange Act (7 U.S.C. 7a(a)(12)) is amended by striking paragraph (12) and inserting the following:

''(12)(A)(i) except as otherwise provided in this paragraph, submit to the Commission all bylaws, rules, regulations, and resolutions (collectively referred to in this subparagraph as 'rules') made or issued by the contract market, or by the governing board or committee of the contract market (except those relating to the setting of levels of margin, those submitted pursuant to section 5 or 6(a), and those the Commission may specify by regulation) and may make a rule effective not earlier than 10 business days after the receipt of the submission by the Commission or earlier, if approved by the Commission by rule, regulation, order, or written notice, unless, within the 10-business-day period, the Commission notifies the contract market in writing of its determination to review such rules for disapproval and of the specific sections of this Act or the regulations of the Commission that the Commission determines the rule would violate. The determination to review such rules for disapproval shall not be delegable to any employee of the Commission. Not later than 45 calendar days before disapproving a rule of major economic significance (as determined by the Commission), the Commission shall publish a notice of the rule in the Federal Register. The Commission shall give interested persons an opportunity to participate in the disapproval process through the submission of written data, views, or arguments. The determination by the Commission whether a rule is of major economic significance shall be final and not subject to judicial review. The Commission shall disapprove, after appropriate notice and opportunity for hearing (including an opportunity for the contract market to have a hearing on the record before the Commission), a rule only if the Commission determines the rule at any time to be in violation of this Act or a regulation of the Commission. If the Commission institutes proceedings to determine whether a rule should be disapproved pursuant to this paragraph, the Commission shall provide the contract market with written notice of the proposed grounds for disapproval, including the specific sections of this Act or the regulations of the Commission that would be violated. At the conclusion of the proceedings, the Commission shall determine whether to disapprove the rule. Any disapproval shall specify the sections of this Act or the regulations of the Commission that the Commission determines the rule has violated or, if effective, would violate. If the Commission does not institute disapproval proceedings with respect to a rule within 45 calendar days after receipt of the rule by the Commission, or if the Commission does not conclude a disapproval proceeding with respect to a rule within 120 calendar days after receipt of the rule by the Commission, the rule may be made effective by the contract market until such time as the Commission disapproves the rule in accordance with this paragraph.

''(B)(i) The Commission shall issue regulations to specify the terms and conditions under which, in an emergency as defined by the Commission, a contract market may, by a two-thirds vote of the governing board of the contract market, make a rule (referred to in this subparagraph as an 'emergency rule') immediately effective without compliance with the 10-day notice requirement under subparagraph (A), if the contract market makes every effort practicable to notify the Commission of the emergency rule, and provide a complete explanation of the emergency involved, prior to making the emergency rule effective.

''(ii) If the contract market does not provide the Commission with the requisite notification and explanation before making the emergency rule effective, the contract market shall provide the Commission with the notification and explanation at the earliest practicable date.

''(iii) The Commission may delegate the power to receive the notification and explanation to such individuals as the Commission determines necessary and appropriate.

''(iv) Not later than 10 days after the receipt from a contract market of notification of such an emergency rule and an explanation of the emergency involved, or as soon as practicable, the Commission shall determine whether to suspend the effect of the rule pending review by the Commission under the procedures of subparagraph (A).

''(v)(I) The Commission shall submit a report on the determination of the Commission on the emergency rule under clause (iv), and the basis for the determination, to the affected contract market, the Committee on Agriculture of the House of Representatives, and the Committee on Agriculture, Nutrition, and Forestry of the Senate.

''(II) If the report is submitted more than 10 days after the Commission's receipt of notification of the emergency rule from a contract market, the report shall explain why submission within the 10-day period was not practicable.

''(III) A determination by the Commission to suspend the effect of a rule under this subparagraph shall be subject to judicial review on the same basis as an emergency determination under section 8a(9).

''(IV) Nothing in this paragraph limits the authority of the Commission under section 8a(9);''.

SEC. 10. AUDIT TRAIL.

Section 5a(b) of the Commodity Exchange Act (7 U.S.C. 7a(b)) is amended—

(1) in paragraph (3), by inserting ''selected by the contract market'' after ''means'' each place it appears; and

(2) by adding at the end the following:

''(7) The requirements of this subsection establish performance standards and do not mandate the use of a specific technology to satisfy the requirements.''.

SEC. 11. CONSIDERATION OF EFFICIENCY, COMPETITION, RISK MANAGEMENT, AND ANTITRUST LAWS.

Section 15 of the Commodity Exchange Act (7 U.S.C. 19) is amended—

(1) by striking ''SEC. 15. The Commission'' and inserting the following:

''SEC. 15. (a)(1) Prior to adopting a rule or regulation authorized by this Act or adopting an order (except as provided in subsection (b)), the Commission shall consider the costs and benefits of the action of the Commission.

''(2) The costs and benefits of the proposed Commission action shall be evaluated in light of considerations of protection of market participants, the efficiency, competitiveness, and financial integrity of futures markets, price discovery, sound risk management practices, and other appropriate factors, as determined by the Commission.

''(b) Subsection (a) shall not apply to the following actions of the Commission:

''(1) An order that initiates, is part of, or is the result of an adjudicatory or investigative process of the Commission.

''(2) An emergency action.

''(3) A finding of fact regarding compliance with a requirement of the Commission.

''(c) The Commission''; and

(2) by striking ''requiring or approving'' and inserting ''requiring, reviewing, or disapproving''.

SEC. 12. DISCIPLINARY AND ENFORCEMENT ACTIVITIES.

(a) IN GENERAL.—It is the sense of Congress that the Commodity Futures Trading Commission should—

(1) to the extent practicable, avoid unnecessary duplication of effort in pursuing disciplinary and enforcement actions if adequate self-regulatory actions have been taken by contract markets and registered futures associations; and

(2) retain an oversight and disciplinary role over the self-regulatory activities by contract markets and registered futures associations in a manner that is sufficient to safeguard financial and market integrity and the public interest.

(b) REPORT.—Not later than 1 year after the date of enactment of this Act, the Commission shall submit a report to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate that evaluates the effectiveness of the enforcement activities of the Commission, including an evaluation of the experience of the Commission in preventing, deterring, and disciplining violations of the Commodity Exchange Act (7 U.S.C. 1 et seq.) and Commission regulations involving fraud against the public through the bucketing of orders and similar abuses.

SEC. 13. DELEGATION OF FUNCTIONS BY THE COMMISSION.

(a) IN GENERAL.—It is the sense of Congress that the Commodity Futures Trading Commission should—

(1) review its rules and regulations that delegate any of its duties or authorities under the Commodity Exchange Act (7 U.S.C. 1 et seq.) to contract markets or registered futures associations;

(2) consistent with the public interest and law, determine which additional functions, if any, performed by the Commission should be delegated to contract markets or registered futures associations; and

(3) establish procedures (such as spot checks, random audits, reporting requirements, pilot projects, or other means) to ensure adequate performance of the additional functions that are delegated to contract markets or registered futures associations.

(b) REPORT.—Not later than 1 year after the date of enactment of this Act, the Commission shall report the results of its review and actions under subsection (a) to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate.

SEC. 14. TECHNICAL AND CONFORMING AMENDMENTS.

(a) Section 1a(13)(B) of the Commodity Exchange Act (7 U.S.C. 1a(13)(B)) is amended by striking ''state'' and inserting ''State''.

(b) Section 2(a)(1)(B)(iv)(I) of the Commodity Exchange Act (7 U.S.C. 2a(iv)(I)) is amended in the last sentence by striking ''section 6 of this Act'' and inserting ''section 6(a)''.

(c) Section 4(c)(3)(H) of the Commodity Exchange Act (7 U.S.C. 6(c)(3)(H)) is amended by striking ''state'' and inserting ''State''.

(d) Section 4a(e) of the Commodity Exchange Act (7 U.S.C. 6a(e)) is amended in the last sentence by striking ''section 9(c) of this Act'' and inserting ''section 9(a)(5)''.

(e) Section 4c(d)(2)(A)(iv) of the Commodity Exchange Act (7 U.S.C. 6c(d)(2)(A)(iv)) is amended by striking ''78c(a)(12)),'' and inserting ''78c(a)(12))),''.

(f) Section 4f(c)(4)(B)(i) of the Commodity Exchange Act (7 U.S.C. 6f(c)(4)(B)(i)) is amended—

(1) by striking ''compiled'' and inserting ''complied''; and

(2) by striking ''1817(a),'' and inserting ''1817(a)),''.

(g) Section 5a(a) of the Commodity Exchange Act (7 U.S.C. 7a(a)) is amended—

(1) in paragraph (11)(ii), by striking the second semicolon at the end;

(2) in paragraph (15)(C), by striking ''categories as'' and inserting ''categories as—''; and

(3) in paragraph (17)—

(A) in subparagraph (A), by striking ''minimum, that'' and inserting ''minimum, that—''; and

(B) in subparagraph (B)(ii), by striking ''affect'' and inserting ''effect''.

(h) Sections 5b, 6(b), 6(c), 6(d), and 13(c) of the Commodity Exchange Act (7 U.S.C. 7b, 8(b), 9, 13b, and 13c(c)) are amended by striking ''or the Commission'' after ''the Commission'' each place it appears.

(i) Section 6(c) of the Commodity Exchange Act (7 U.S.C. 9) is amended in the tenth sentence by inserting a comma after ''such violation''.

(j) Section 6a(a) of the Commodity Exchange Act (7 U.S.C. 10a(a)) is amended in the second sentence by striking ''Such Commission'' and inserting ''The Commission''.

(k) Section 8 of the Commodity Exchange Act (7 U.S.C. 12) is amended—

(1) in subsection (a)(1)(B), by striking ''in any receivership proceeding commenced involving a receiver appointed in a judicial proceeding by the United States or the Commission'' and inserting ''in any receivership proceeding involving a receiver appointed in a judicial proceeding commenced by the United States or the Commission''; and

(2) in the last sentence of subsection (e), by striking ''authority.'' and inserting ''authority''.

(l) Section 8a of the Commodity Exchange Act (7 U.S.C. 12a) is amended—

(1) in paragraph (2)—

(A) in subparagraph (B), by striking ''the provisions of paragraph (3) of this section'' and inserting ''the provisions of this paragraph or paragraph (3)'';

(B) in subparagraph (C), by adding a semicolon at the end;

(C) in subparagraph (D), by inserting ''pleaded guilty to or has'' after ''such person has''; and

(D) in subparagraph (E), by striking ''Investors'' and inserting ''Investor'';

(2) in paragraph (3)—

(A) in subparagraph (B), by striking ''Investors'' and inserting ''Investor'';

(B) by striking subparagraph (D) and inserting the following:

''(D) the person has pleaded guilty to or has been convicted of a felony other than a felony of the type specified in paragraph (2)(D), or has pleaded guilty to or has been convicted of a felony of the type specified in paragraph (2)(D) more than 10 years preceding the filing of the application;''; and

(C) in subparagraph (H), by striking ''or has been convicted in a State court,'' and inserting ''or has pleaded guilty to, or has been convicted, in a State court,''; and

(3) in paragraph (11)(F), by striking ''section 6(b)'' and inserting ''section 6(c)''.

(m) Section 8c(a)(2) of the Commodity Exchange Act (7 U.S.C. 12c(a)(2)) is amended in the second sentence by inserting after ''denied access,'' the following: ''to any other exchange, to any other registered futures association,''.

(n) Section 8e(d)(1) of the Commodity Exchange Act (7 U.S.C. 12e(d)(1)) is amended by striking ''section 6b'' and inserting ''section 6(c)''.

(o) Section 9 of the Commodity Exchange Act (7 U.S.C. 13) is amended—

(1) by redesignating subsection (f) as subsection (e); and

(2) in subsection (e)(1) (as so redesignated), by striking the period at the end and inserting ''; or''.

(p) Section 12(b) of the Commodity Exchange Act (7 U.S.C. 16(b)) is amended by aligning the margin of paragraph (4) so as to align with paragraph (3).

(q) Section 14(a) of the Commodity Exchange Act (7 U.S.C. 18(a)) is amended by aligning the margin of paragraph (2) so as to align with subsection (b).

(r) Section 17 of the Commodity Exchange Act (7 U.S.C. 21) is amended—

(1) in subsection (b)—

(A) in paragraph (9)(D), by striking the semicolon at the end and inserting a period;

(B) in paragraph (10)(C)(ii), by striking ''and'' at the end;

(C) in paragraph (11), by striking the period at the end and inserting a semicolon;

(D) in paragraph (12)—

(i) by striking ''(12)(A)'' and inserting ''(12)''; and

(ii) by striking the period at the end and inserting ''; and''; and

(E) in paragraph (13), by striking ''A major'' and inserting ''a major'';

(2) in subsection (h)(1)—

(A) in the first sentence, by inserting after ''person associated with a member,'' the following: ''takes any membership action against any member or associate responsibility action against any person associated with a member,''; and

(B) by adding at the end the following: ''The association shall make public its findings and the reasons for the association action (including the action and penalty imposed) in any action described in the first sentence, except that evidence obtained in the action shall not be disclosed other than to an exchange, the Commission, or the member or person who is being disciplined, who is subject to a member responsibility action, who is being denied admission to the futures association, or who is being barred from associating with members of the futures association.'';

(3) in the last sentence of subsection (j)—

(A) by striking ''one hundred and eighty days'' and inserting ''45 calendar days''; and

(B) by striking ''one year'' and inserting ''120 calendar days''; and

(4) by redesignating subsection (q) (as added by section 206(b)(2) of the Futures Trading Practices Act of 1992 (Public Law 102–546)) as subsection (r) and moving such subsection to the end of the section.

SUMMARY AND DISCUSSION—THE COMMODITY EXCHANGE ACT AMENDMENTS OF 1997

SECTION 1. SHORT TITLE

The bill is entitled the ''Commodity Exchange Act Amendments of 1997.''

SEC. 2. TREASURY AMENDMENT

The ''Treasury amendment'' to the Commodity Exchange Act (so called because it was added in 1974 at the request of the Treasury Department) excludes certain transactions from the Act altogether, so that the CFTC has no authority to regulate them. Foreign currency and government securities transactions are the most prominent categories of transactions excluded by the Treasury amendment, though there are several others. The history, purpose and scope of the Treasury amendment have been the subject of frequent disagreement even among federal agencies, and the provision has been frequently litigated.

The CFTC has historically asserted that the amendment permits it to enforce the Act against firms offering Treasury amendment products to the general public, arguing that the amendment's purpose was merely to exclude such institutional markets as the interbank currency market from regulation. Other agencies have dissented from this view. In addition, futures exchanges have argued that they should be able to offer contracts in Treasury amendment products that would not be subject to CFTC regulation, as long as they did not offer these contracts to the general public but only to a sophisticated, institutional or professional clientele.

The Committee, in mid-1996, asked the CFTC and the Treasury Department to arrive at a consensus on how the Treasury amendment should be interpreted and, if necessary, re-written. Unfortunately, the agencies were unable to agree and have formulated recommendations that are quite different in both intent and effect.

This legislation reflects a view that there should be a federal role in protecting retail investors from abusive, improper or fraudulent activity in connection with the sale of foreign currency futures or options by an otherwise unregulated entity. By the same token, the legislation provides no role for the CFTC where other regulators—including the banking and securities agencies—already provide federal regulatory oversight. Similarly, the bill views current regulation of other off-exchange Treasury amendment products as adequate and does not provide a role for the CFTC in this regard. For example, federal agencies and private firms alike have widely agreed that it would be unnecessary and inappropriate for the CFTC to regulate the ''when-issued'' market in Treasury securities.

The bill defines more clearly the CFTC's role in regulating retail transactions and affords equivalent opportunities for futures exchanges to develop markets in Treasury amendment products for professional investors. In particular, the bill states that an unsupervised entity systematically marketing standardized, non-negotiable foreign currency transactions to retail investors will be considered a ''board of trade,'' and hence subject to the CFTC's jurisdiction.

The bill instructs the CFTC to define the term ''retail investors,'' and provides some guidance on how to do so. It further clarifies that an option involving a Treasury amendment product is a ''transaction,'' meaning that it is excluded from the Act to the same extent as other transactions. Finally, the bill retains the current Treasury amendment provision which extends CFTC jurisdiction to products offered on a board of trade, but makes this provision apply only when these products are offered to the general public. The effect is that futures exchanges would be able to develop separate markets in Treasury amendment products. As is the case when such products are traded over the counter among institutions today, the Act and its regulations would not apply. The bill instructs the CFTC to define the term ''the general public,'' in order to make clear the parameters under which exchanges may establish these markets. The bill also confirms the CFTC's ability, acting pursuant to its emergency powers under Sec. 8a(9) of the Act, to secure the integrity and viability of approved contract markets in the event that market factors, including the establishment by futures exchanges of markets in Treasury amendment products, adversely affect them.

SEC. 3. HEDGING

The CEA does not directly define the term ''hedging.'' In Section 3 of the CEA, which contains various legislative findings that justify regulation of futures markets, the statute speaks of business operators ''hedging themselves against possible loss through fluctuations in price.'' Questions have been raised whether hedging can occur against risks other than price risks—for instance, in new futures contracts that are based on yields of specified crops in particular States. The bill deletes the phrase ''through fluctuations in price.'' It makes clear that risks to be hedged may be risks other than those directly resulting from price changes. This change will not affect the authority to establish speculative limits, require reporting of large trader positions and otherwise ensure market integrity.

In the course of hearings and discussions on the proposed legislation, the Committee may also consider whether to revise Section 3 of the Act more extensively in order to bring it up to date with market needs and conditions, preserving the Act's important functions of facilitating price discovery and customer protection while recognizing the changes that have occurred in the composition and sophistication of market participants as well as the more competitive environment in which the futures industry now operates.

SEC. 4. DELIVERY POINTS FOR FOREIGN FUTURES CONTRACTS

In recent years, some overseas futures exchanges have established delivery points in the United States. The implications of making and taking delivery of a physical commodity that is priced on a foreign exchange may differ, depending on the comparability of price discovery on that exchange and on U.S. exchanges, as well as other factors. Serious questions were raised last year, as various allegations about the copper markets were made and investigated, about what role, if any, delivery points for foreign futures contracts may have played in that affair. These questions are not yet answered. However, the legislation makes changes that will be appropriate regardless of the outcome of specific investigations.

The bill directs the CFTC to consult with overseas regulators and other appropriate parties in countries where futures exchanges have established U.S. delivery points. The aim of the consultations will be to secure adequate assurances against any adverse effect on U.S. markets because of these delivery points. Such assurances could take the form of changes to regulations or trading rules in the overseas market.

The bill also gives the CFTC authority to obtain information from warehouses that are delivery points for foreign exchanges. This information would be similar to that which the CFTC may already require of persons making trades on overseas futures markets, and will assist the CFTC in ensuring market integrity, preventing abuses, and otherwise discharging its responsibilities.

SEC. 5. EXEMPTION AUTHORITY AND SWAP EXEMPTION

The Act gives the CFTC authority to exempt transactions from its regulatory requirements, either completely or on stated terms. In 1993, the CFTC used this authority to exempt swap agreements from most, but not all, portions of the Act. This exemption generally has worked well, facilitating a climate in which swaps, which offer numerous benefits to their users if properly and prudently employed, could trade with secure legal status. (It was the lack of such legal certainty which, in part, prompted Congress to enact the exemptive authority.) Despite the CFTC's prompt action following the 1992 enactment of exemptive authority, the status of swaps remains subject to a change in regulations that could subject these instruments to renewed legal uncertainty.

The bill will provide additional legal certainty for swaps and similar transactions in three ways. First, the bill codifies the present exemption from regulation for transactions that meet its requirements, either now or in the future. For these qualifying instruments—which now rely on the exemptions for swaps in Part 35 of the Code of Federal Regulations and for hybrid instruments in Part 34—a statutory change would be required in order for the exemption to become more restrictive than it now is. The codification does not affect the CFTC's power to grant additional exemptions that would be less restrictive than, or independent of, the current exemption. Nor does it limit the CFTC's ability to enforce antimanipulation or anti-fraud provisions of the CEA as they may apply to these transactions or as the present exemptions may be conditioned on compliance with their provisions. The CFTC will have, under the codified exemption, the same authority to enforce these provisions of the Act as it has retained under its current policies. In addition, the CFTC would implement the conditions for an exemption, such as making creditworthiness a material consideration, in a manner consistent with its current interpretations. (It has been suggested that some additional conforming changes may also be appropriate to Section 12(e) of the Act.)

Second, the bill codifies two important elements of the present swaps exemptive authority, again to enhance legal certainty. The legislation clarifies that the CFTC may issue an exemption that is applicable to the extent the exempted transaction may have been subject to the Act—i.e., without requiring a prior decision on whether the transaction actually was, in fact, subject to the Act. Relatedly, the legislation states that the mere fact that a transaction was exempted from the Act does not, in itself, create a presumption that the transaction was one that would have fallen under the Act's regulatory requirements had it not been exempted. Thus, the bill makes the existence of an exemption a neutral event, for purposes of determining whether the exempted transaction was subject to the Act: No inference for or against such a determination is warranted by the mere fact of an exemption. Both these clarifications are consistent with present regulations for these exemptions.

Third, the bill for the first time extends the same legal certainty to swaps based on equities as is now available for other swaps. Although the great majority of swaps involve interest rates or currencies, there presently exist swaps based on equities or equity indices. The legal status of these instruments has been less certain than that of other swaps; they rely primarily on a 1989 policy statement by the CFTC which predates the present swaps exemption. The bill codifies, for these swaps, the same exempt

status as for other similar instruments: To the extent they may be subject to the Act's provisions, they will be exempt from those provisions (other than anti-fraud and anti-manipulation strictures) as long as they satisfy the terms and conditions of the present swaps exemption as to the way in which they are structured and traded, and as to the persons who may enter into them.

SEC. 6. EXEMPT TRANSACTIONS ON CONTRACT MARKETS

In contrast to the exemptions for swaps and hybrids, the Commission's exemptive terms for on-exchange professionally traded markets (codified in Part 36 of the Code of Federal Regulations) have not led to significant commercial activity. The legislation provides that such markets may be established by futures exchanges, subject to some limitations. In particular, the bill does not exempt such ''professional markets'' from the so-called ''Shad-Johnson'' accord, which governs on-exchange products involving equities. Moreover, the legislation excludes agricultural commodities from the list of products for which the professional markets must be recognized.

SEC. 7. CONTRACT DESIGNATION

The Act now requires futures exchanges to be ''designated'' as a ''contract market'' for each futures contract they trade. This process has been streamlined by the CFTC in recent years, but the statute continues to reflect a rather elaborate process in which, in many ways, the burden of proof is placed on exchanges to demonstrate why they should be able to offer new products for trading. Even for a sector like the the futures industry, where the public interest requires regulation, this implicit presumption against new product development is out of date.

The bill streamlines the process of introducing new futures contracts, both by compressing the time available for agency review and by creating a presumption that products developed by exchanges should be permitted to trade unless the CFTC finds compellingly why they should not. The legislation treats new contract applications as rules, albeit under somewhat different procedures from other exchange rules. Under the new procedure, an exchange submits a new contract to the CFTC. The new contract may trade after 10 business days, unless the CFTC states an intention to review it for possible disapproval. After a further 15 business days, the new contract can be traded unless the CFTC institutes proceedings to disapprove it. These proceedings are to be completed within 120 days; if not, the new contract can trade until and unless it is finally disapproved. In contrast to the present burden on an exchange to show that a contract is in ''the public interest,'' the CFTC could only disapprove a contract by showing that it was ''contrary to the public interest'' (or by showing that it violated law or regulations). The philosophy is a fairly simple one: Subject to prudent regulatory limits, private futures exchanges can more appropriately and efficiently decide which new products are ripe for trading than can the government. The exchanges may sometimes err in these judgments, but that is the way markets work.

SEC. 8. DELIVERY BY FEDERALLY LICENSED WAREHOUSES

An obscure provision of the Act now allows any federally licensed grain warehouse to make delivery against a futures contract, on giving reasonable notice. Though seldom if ever used, this provision appears to conflict with the ability of exchanges to establish their own trading procedures, including delivery points. In an extremely tight market, the current provision could in some circumstances facilitate market manipulation. The bill repeals this provision.

SEC. 9. SUBMISSION OF RULES TO COMMISSION

The bill revises current requirements for submitting exchange rules to the CFTC. These rules affect the everyday procedures for doing business on the exchange, as well as the ground rules for trading. They run the gamut from major to minor. As with the procedures for approving new contracts, the legislation compresses the time available for federal review and generally streamlines procedures. Rules are to be submitted to the CFTC and can become effective in 10 business days unless the CFTC notifies the exchange that it will review them for possible disapproval. If the CFTC does not institute disapproval proceedings within 45 days of receiving the proposed rule, or conclude its proceedings within 120 days, the rule can become effective until and unless disapproved.

The authors of the bill intend that its legislative history will also discuss the implementation of statutory requirements for the composition of exchange boards of directors. The CFTC will be directed to report, on an ongoing basis, its evaluation of how fully these requirements are being met. The report language will provide further clarification of Congressional intent with regard to the qualification of individuals to satisfy particular requirements for board representation.

SEC. 10. AUDIT TRAIL

Futures exchanges are subject to audit trail requirements that are intended to ensure market integrity, and to deter and detect abuse. The bill clarifies these requirements in one respect. It states—consistent with testimony by the CFTC before Congress in 1995—that the audit trail requirements establish a performance standard, not a mandate for any particular technological means of achieving the standard. In further support of this clarification, the bill speaks of the ''means selected by the contract market'' for meeting audit trail standards. The authors of the bill intend that its legislative history will also note further CFTC testimony that, in assessing the ''practicability'' of various components of the audit trail standards, the cost to exchanges of meeting the standards is one factor to be taken into account.

SEC. 11. MISCELLANEOUS TECHNICAL AMENDMENTS

The bill makes several technical changes to correct omissions in the current statute. Moreover, it makes additional technical amendments, in many cases as a result of CFTC suggestions, that correct previous errors or inconsistencies as to typography, proper citation and the like.

SEC. 12. CONSIDERATION OF EFFICIENCY, COMPETITION, RISK MANAGEMENT, AND ANTITRUST LAWS

The bill requires the CFTC, in issuing rules, regulations and some types of orders, to take into account the costs and benefits of the action it contemplates. The requirement is not for a quantitative cost-benefit analysis, but a mandate to consider both costs and benefits, as well as other enumerated factors. The authors of the bill believe that in establishing its policies and giving direction to market participants, the CFTC should weigh how its actions may affect the participants' costs of doing business, as well as what benefits may accrue from the action.

Some activities of the CFTC, of course, do not call for this kind of approach, and indeed applying a cost-benefit requirement to them would be inappropriate. Thus, the bill exempts the CFTC's adjudicatory and investigative processes, emergency actions and certain findings of fact that are objective, quantitative or otherwise unsuitable for a cost-benefit approach. The bill's eventual legislative history will further discuss Congressional intent in enacting this requirement.

SEC. 13. DISCIPLINARY AND ENFORCEMENT ACTIVITIES

Enforcement is a priority for the CFTC. Like other financial regulators, the CFTC is assisted in its enforcement activities by the complementary rules, surveillance and disciplinary actions of self-regulatory organizations (SROs). These include both the futures exchanges themselves and the National Futures Association. The bill provides guidance to the CFTC on the deployment of enforcement resources, and requires a report in one year on the overall enforcement program. The legislation expresses the sense of Congress that the CFTC should avoid unnecessary duplication of effort where SROs have taken adequate action to deter abuse and ensure customer protection. It further states that the CFTC's oversight and disciplinary role should be sufficient to safeguard market integrity and protect public confidence in markets.

SEC. 14. DELEGATION OF FUNCTIONS BY THE COMMISSION

The CFTC, under current law, has delegated some limited duties to the National Futures Association. Today's austere budget climate makes it prudent for the commission to assess whether other functions could appropriately be delegated. The bill calls on the CFTC to determine which, if any, additional functions should be delegated to SROs, suggesting the use of procedures like spot checks and random audits to ensure that any delegated functions are adequately performed, and requires a report in one year with the results of the review. The authors intend that the bill's legislative history will cite several current CFTC activities that could be considered for delegation.●

● Mr. HARKIN. Mr. President, I am pleased to join Chairman LUGAR and Senator LEAHY in introducing legislation to amend the Commodity Exchange Act. This bill updates and streamlines U.S. futures trading law, and provides needed clarification to several critical issues facing today's vast derivative markets.

After reviewing the committee testimony taken last year, and meeting informally with industry, regulators, and academics, Chairman LUGAR, Senator LEAHY, and I are convinced that these changes are appropriate and necessary if the United States is to maintain its dynamic, world-class futures trading industry.

There is a strong public interest in maintaining a competitive and sound futures market in the United States. These markets are critical because they allow farmers, ranchers, and other businesses to manage risk and maximize their investment opportunities. At the same time, the committee has an obligation to protect the public trust through effective enforcement and regulatory measures that prevent and punish fraud and other abuses that may, and have, occurred in the international financial markets—including the futures market.

This bill is a bipartisan effort to find the balance between the need for prudent regulation with industry's need for changes so that the U.S. futures market continues to be the driving

force in today's competitive global financial markets.

Introduction of this legislation is timely. President Clinton's 1998 budget, due for release later this week, challenges Federal agencies to do more with less. It will ask Federal agencies to improve programs and services and streamline procedures.

This legislation provides legislative backing to accomplish this crucial goal. The bill proposes specific changes that will further assist the Commodity Futures Trading Commission, the primary regulator of the futures industry, to continue its on-going effort to focus scarce resources where they are most effective—in enforcement—preventing consumer fraud and manipulation of market prices.

The legislation allows industry to focus on product innovation and marketing so that the end users—farmers, ranchers, and other businesses—have available to them, free of fraud and at a competitive price, the most state-of-the-art financial products.

The bill also provides the CFTC with additional authority to require U.S. delivery points for overseas futures markets to provide information similar to that currently demanded of American market participants. This provision may help prevent a repeat of last summer's 1996 London/Tokyo copper market crisis where billions of dollars were lost due, in part, to lack of sufficient information and Government oversight by the CFTC's foreign counterparts.

I am pleased that this legislation addresses the uncertainty that currently exists in the so-called ''Treasury amendment'', a 1974 provision of the Commodity Exchange Act that excludes certain financial products from its regulatory coverage. This provision has long been controversial and our proposal suggests one solution.

It is unfortunate that the Treasury Department and the CFTC were unable to negotiate a resolution of this issue in time for this bill's reintroduction. But I remain open to alternative proposals, and look forward to hearing the views of all interested regulators, industry participants, and users of these products at next week's hearings.

Two other important aspects of this legislation are a provision that provides greater legal certainty for the over-the-counter financial tools such as swaps and hybrids, and a provision that codifies a 1992 provision to allow on-exchange products to be traded solely among professional investors. Both of these provisions are important to the ability of private enterprises to manage business risk.

I am very pleased to join my colleagues in offering this bill. Chairman LUGAR, Senator LEAHY, and I have worked together on futures issues for many years. We did the same on this bill—working to ensure that these markets remain competitive while maintaining effective provisions on customer protection and market integrity.

Introducing this bill early in the 105th Congress offers ample time to continue last year's public discussion and debate over what changes are appropriate and necessary to maintaining a viable U.S. futures market.

It is my experience that such a dialogue helps develop solid bipartisan legislation. As with most issues, there are many interests that must be balanced, and this bill strives to find that balance. I am certainly open to further input as we hold hearings next week.

I look forward to continuing the process.●

By Mr. FEINGOLD (for himself and Mr. KOHL):

S. 258. A bill to improve price discovery in milk and dairy markets by reducing the effects of the National Cheese Exchange on the basic formula price established under milk marketing orders, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

THE MILK PRICE DISCOVERY IMPROVEMENT ACT OF 1997

● Mr. FEINGOLD. Mr. President, I introduce the Milk Price Discovery Improvement Act of 1997 with my senior Senator from Wisconsin [Mr. KOHL]. Mr. President, this bill addresses longstanding farmer concerns that milk prices can be manipulated by those with the incentive and ability to do so. Those concerns were validated by a March 1996 University of Wisconsin study funded by the Department of Agriculture which concluded that the National Cheese Exchange, a cash market for cheese located in Green Bay, WI, directly and indirectly influences farm milk prices and is highly vulnerable to price manipulation by its major traders.

Concern about trader concentration and price manipulation is not exclusive to the dairy industry, Mr. President. Two weeks ago, the minority leader, Senator DASCHLE, introduced the Cattle Industry Improvement Act which addressed concerns about growing concentration in the livestock industry and the lack of market information available to livestock producers. Less than 2 percent of the cattle in the U.S. are sold on markets with open and competitive bidding and the top four packing firms in this country slaughter 80 percent of all cattle.

The unfortunate trend of increasing concentration throughout agriculture and the growing scarcity of reliable market information has placed farmers at an extreme disadvantage compared to powerful corporate traders. Mr. President, I was pleased to cosponsor the Cattle Industry Improvement Act, which seeks to prevent noncompetitive practices in the livestock industry and improve market information because I believe this trend must be stopped.

The bill I am introducing today addresses these same alarming trends in the dairy industry and seeks to prevent manipulation of farm-level milk prices. Dairy farmers must not be held captive to a market that cannot be relied upon to provide accurate information about the value of the milk they produce. Unfortunately, farm milk prices are currently determined by such a market—the National Cheese Exchange.

The National Cheese Exchange is the only cash market in the United States for the sale of bulk cheese. Located in Green Bay, WI, the Exchange trades cheese each Friday for half an hour. Between 1988 and 1993, only 1 percent of all bulk cheese sold nationally was traded on the NCE. During this 5-year period, eight buyers and sellers dominated much of the exchange trading, despite exchange membership of 30 to 40 companies. The top seller on the exchange accounted for 75 percent of all sales during this period.

Thus, the exchange is not only thin with respect to the volume of cheese bought and sold, it is also thinly traded with the same small number of large firms dominating the trading activity. The opinion price on the National Cheese Exchange, and other markets with these characteristics, is easily influenced by one trade. In addition, unlike other cash markets which trade more frequently, when the price changes at the National Cheese Exchange it stays at that level until one week later at the next trading session. This infrequency of trading lends greater significance to any trading activity which alters the price of cheese.

The existence of such a market on its own would not be a problem if it did not affect dairy farmers and others off the exchange. Unfortunately, the opinion price of the National Cheese Exchange directly and decisively affects the price that farmers throughout the Nation receive for their milk. A 1-cent change in the opinion price at the exchange generally translates into a 10-cent change in the price of milk to farmers. When prices on the exchange drop suddenly and precipitously, dairy farmers nationally lose millions of dollars in producer receipts. In the last 3 months of 1996, cheese prices on the National Cheese Exchange fell by more than 50 cents per pound, with an unprecedented price plunge of 21 cents in one trading session. As a result, as many of my colleagues are aware, milk prices fell by more than $4 per hundredweight—a 26-percent decline in income. In Wisconsin alone, this price decline has cost dairy farmers more than $165 million in lost income.

The price decline has been extremely painful for dairy farmers still struggling with high feed bills but what has made the pain more difficult to bear is the general belief held by many dairy economists that the price fell too far too fast and could not be justified based on prevailing market conditions. Whether the price declined so drastically simply because the National Cheese Exchange is a poor indicator of market conditions or because traders intentionally drove the price down is irrelevant. The perception of farmers that the exchange price was manipulated warrants its retirement as the mover of milk prices in this country.

The reality that the exchange clearly overreacted to market conditions with record-setting price declines necessitates it.

The National Cheese Exchange has such a dramatic effect on milk prices for two reasons. First, milk prices are tied directly to the exchange opinion price through the basic formula price [BFP], calculated by USDA. The BFP determines the class III price for milk regulated under the Federal milk marketing order system. Second, even if the formal linkage did not exist, milk prices would still be dramatically affected by the exchange opinion because it is used as the benchmark in virtually all forward contracts for bulk cheese; 90 to 95 percent of bulk cheese in the United States is sold through forward contracts. In other words, virtually all cheese sold in the country is priced based on the opinion price at the Cheese Exchange. That is, at least in part, due to the lack of any alternative market information on the value of cheese.

The combination of thin nature of the National Cheese Exchange and its influence on milk prices nationally, creates a situation in which there is both the opportunity and the incentive for price manipulation. Anyone buying or selling cheese on the National Cheese Exchange may be able to affect the price of milk throughout the country. The extensive report issued by the University of Wisconsin last year concluded that the trading patterns on the NCE suggest that lead traders use the NCE to influence exchange prices with the intent of affecting milk and cheese prices nationwide.

Unfortunately, no viable alternative to the National Cheese Exchange currently exists for cheese price discovery. While there is a futures market for cheese and other dairy products, trading of futures contracts have been weak making the futures prices unreliable benchmarks. Furthermore, there is little or no market information on prices for off-exchange spot transactions of cheese collected by the Department of Agriculture. Secretary of Agriculture Dan Glickman recently announced a new cheese price series that should improve market information for off-exchange transactions. However, such information may not be adequate to supplant the role of the National Cheese Exchange. Of even greater concern is that despite its influence over milk prices nationwide and its vulnerability to manipulation, the exchange is not regulated by any State or Federal entity.

Mr. President, farmers throughout the country are frustrated by a pricing system that can no longer guarantee that milk prices are determined competitively and without manipulation and that they believe led to the severe and unwarranted price decline last fall. They have rightfully demanded that we change the way milk prices are set by U.S. Department of Agriculture to reduce the influence of the exchange on farm-level prices. In addition, farmers have called for increased regulation of the exchange to prohibit manipulation of milk and cheese prices.

Mr. President, that is my goal in introducing this legislation today. Farmers must not be held hostage to this market any longer. First, my legislation directs USDA to break the direct link between the basic formula price and the National Cheese Exchange. Second, it requires USDA to develop alternative sources of cheese market information so that buyers and sellers of cheese need no longer rely on the exchange as a reference price for forward contracts. Finally, my legislation will provide USDA with clear authority to prohibit noncompetitive practices on any cash market that affects the price of milk regulated under Federal milk marketing orders, including the National Cheese Exchange. By law, USDA has been charged with ensuring orderly conditions for the marketing of milk. The agency cannot meet that charge without greater authority to oversee the National Cheese Exchange and prevent those who benefit from low milk prices from driving them down. Ultimately, the solution to these problems lies in the creation of a reliable price discovery system for milk and dairy products that the dairy industry can rely on. But it will take time to develop those alternatives, and it will take time for the dairy industry to come to rely on them. Until we reach that goal, it is absolutely critical that USDA prohibit noncompetitive activities on the National Cheese Exchange.

Mr. President, I am also pleased to be a cosponsor of the National Cheese Exchange Oversight and Improvement Act introduced by my senior Senator from Wisconsin, Senator KOHL. This bill provides the Commodity Futures Trading Commission [CFTC] with day-to-day regulatory jurisdiction over the activities of the National Cheese Exchange. While the CFTC has some limited jurisdiction over the exchange, they do not have the authority to impose trading rules on the exchange. The new authority provided in our respective bills for USDA and CFTC to oversee the exchange should ensure farmers that until the functions of the exchange can be replaced by alternative price discovery mechanisms, we will do all we can to prevent manipulation of farm milk prices.

Mr. President, I believe the combination of the provisions of the Milk Price Discovery Improvement Act and the National Cheese Exchange Oversight and Improvement Act will go far toward resolving some of the problems that have led to the recent milk price plunge that has cost this country's family farmers so dearly. This legislation, if passed, may also help restore the confidence of dairy farmers in our milk pricing system.

Mr. President, there are varied and complicated reasons that the trend in American agriculture is toward fewer and larger farms and toward greater concentration in processing and manufacturing. However, I believe that Federal policies that provide competitive advantages to larger farms and subtly discriminate against smaller farmers are among them. Sanctioning pricing mechanisms, like the National Cheese Exchange, that provide unequal market power and information, and relying on them to set prices, is one such policy. Small dairy farmers are less able to withstand the lost income resulting from volatile prices caused by the National Cheese Exchange. Small cheese processors and manufacturers that dot Wisconsin's countryside also suffer from price volatility and manipulation on the exchange yet lack the ability to counteract the power of other traders. We can restore a degree of market equality by improving price discovery and by preventing those with the power to manipulate prices from doing so. That is the goal of the Milk Price Discovery Act of 1997. I urge my colleagues to support this important legislation.

Mr. President, I ask unanimous consent that a summary of my legislation as well as the full text of the bill be included in the RECORD.

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

S. 258

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Milk Price Discovery Improvement Act of 1997''.

SEC. 2. FINDINGS.

Congress finds that—

(1) the National Cheese Exchange, located in Green Bay, Wisconsin, is the only cash market for bulk cheese in the United States, trades less than 1 percent of all bulk cheese sold nationally, and currently functions as the only price discovery mechanism for bulk cheese throughout the industry;

(2) the National Cheese Exchange opinion price directly influences milk prices paid to farmers because of its use in the Department of Agriculture's basic formula price under Federal milk marketing orders;

(3) opinion prices at the National Cheese Exchange influence the price for much of the bulk cheese bought and sold in the United States and directly or indirectly influences the price of milk paid to producers throughout the United States;

(4) the National Cheese Exchange is a thinly traded, illiquid, and highly concentrated market that is increasingly volatile;

(5) a report issued by the University of Wisconsin and funded by the United States Department of Agriculture concluded that the National Cheese Exchange is vulnerable to price manipulation;

(6) the thin nature of the National Cheese Exchange and the characteristics of that market that may facilitate price manipulation have led to widespread producer concern about the validity of prices at the National Cheese Exchange; and

(7) it is in the national interest to ensure that prices on cash markets that directly and indirectly affect milk prices are determined in the most competitive manner practicable and to improve price discovery for milk and other dairy products.

SEC. 3. BASIC FORMULA PRICE.

Section 143(a) of the Agricultural Market Transition Act (7 U.S.C. 7253(a)) is amended by adding at the end the following:

''(5) NATIONAL CHEESE EXCHANGE.—

''(A) IN GENERAL.—In carrying out this subsection and section 8c(5) of the Agricultural Adjustment Act (7 U.S.C. 608c(5)), reenacted with amendments by the Agricultural Marketing Agreement Act of 1937, the Secretary shall not, directly or indirectly, use a price established on the National Cheese Exchange to determine the basic formula price for milk or any other milk price regulated by the Secretary.

''(B) REGULATIONS.—Not later than 60 days after the date of enactment of this paragraph, the Secretary shall review and amend the applicable regulations promulgated by the Secretary to ensure that the regulations comply with subparagraph (A).

''(C) EFFECT ON FURTHER REVISION.—Subparagraph (B) shall not preclude a further revision to, or replacement of, the basic formula price under this subsection or section 8c(5) of the Agricultural Adjustment Act (7 U.S.C. 608c(5)), reenacted with amendments by the Agricultural Marketing Agreement Act of 1937, except that the revision or replacement shall be consistent with subparagraph (A).''.

SEC. 4. DAIRY PRICE DISCOVERY AND REPORTING SYSTEM.

Section 203 of the Agricultural Marketing Act of 1946 (7 U.S.C. 1622) is amended by adding at the end the following:

''(o) DAIRY PRICE DISCOVERY AND REPORTING SYSTEM.—

''(1) IN GENERAL.—Not later than 1 year after the date of enactment of this subsection, the Secretary shall develop a price discovery system for raw milk, bulk cheese, and other dairy products in order to facilitate orderly marketing conditions.

''(2) ADMINISTRATION.—In carrying out paragraph (1), the Secretary shall—

''(A) collect and disseminate, on a weekly basis, statistically reliable information, obtained from all cheese manufacturing areas in the United States on prices and terms of trade for spot and forward contracts, reported separately, transactions involving bulk cheese, including information on the national average price and regional average prices for bulk cheese sold through spot and contract transactions;

''(B) provide technical assistance to any person, group of persons, or organization seeking to organize a cash market alternative to the National Cheese Exchange that the Secretary believes will improve price discovery; and

''(C) not later than 180 days after the date of enactment of this subsection—

''(i) in cooperation with the Commodity Futures Trading Commission, conduct a study and report to Congress on means of encouraging improved volume in futures trading for milk, bulk cheese, and other dairy products; and

''(ii) conduct a study and report to Congress on the feasibility and desirability of the creation of an electronic exchange for cheese and other dairy products.

''(3) CONFIDENTIALITY.—All information provided to, or acquired by, the Secretary under paragraph (2)(A) shall be kept confidential by each officer and employee of the Department of Agriculture, except that general weekly statements may be issued that are based on the information and that do not identify the information provided by any person.''.

SEC. 5. OVERSIGHT OF CASH MARKETS AFFECTING FEDERAL MILK MARKETING ORDERS.

Section 8c of the Agricultural Adjustment Act (7 U.S.C. 608c), reenacted with amendments by the Agricultural Marketing Agreement Act of 1937, is amended by adding at the end the following:

''(20) OVERSIGHT OF CASH MARKETS AFFECTING FEDERAL MILK MARKETING ORDERS.—

''(A) DEFINITION OF NONCOMPETITIVE PRACTICE.—In this paragraph, the term 'noncompetitive practice' means an action or measure that involves engaging in a course of business or act for the purpose or with the effect of—

''(i) manipulating or controlling a price on a cash market that affects the price of milk regulated under an order issued under this section;

''(ii) creating a monopoly in the acquiring, buying, selling, or dealing in a product; or

''(iii) restraining commerce.

''(B) GENERAL RULE.—In order to ensure fair trade practices and orderly marketing conditions for milk and milk products under this section, the Secretary shall prohibit noncompetitive practices on a cash exchange for milk, cheese, and other milk products that the Secretary finds affects or influences the price of milk regulated under an order issued under this section.

''(C) OTHER AGENCIES AND STATES.—This paragraph shall not affect the authority of the Federal Trade Commission, Commodity Futures Trading Commission, Department of Justice, any other Federal agency, or any State agency to regulate a noncompetitive practice described in subparagraph (B).

''(D) ENFORCEMENT.—The enforcement provisions of sections 203, 204, and 205 of the Packers and Stockyards Act, 1921 (7 U.S.C. 193, 194, 195) shall apply, to the extent practicable (as determined by the Secretary), to this paragraph.''.

THE MILK PRICE DISCOVERY IMPROVEMENT ACT OF 1997

Section 1. Short Title.

Section 2. Findings.

Section 3. Basic Formula Price.

Requires U.S. Secretary of Agriculture to delink the National Cheese Exchange (NCE) opinion price from the USDA Basic Formula Price used under Federal Milk Marketing Orders at a date no later than 60 days after enactment of this Act. This will eliminate the formulaic link between the NCE and milk prices that has been in place since Spring 1995.

Prohibits USDA's use of NCE prices in any future revision or replacement of the Basic Formula Price.

Section 4. Dairy Price Discovery and Reporting System.

Requires Secretary to take steps to improve price discovery in order to reduce the influence of the National Cheese Exchange on farmer milk prices. Alternative price discovery mechanisms will provide more information to buyers and sellers of cheese and may reduce trader reliance on the Exchange as the sole source of price information.

Requires Secretary to expand USDA's monthly cheese price reporting system to provide weekly information on actual prices paid for cheese throughout the country.

Requires Secretary to provide technical assistance to farmers and others seeking the creation of alternative cash markets.

Requires Secretary to work with the Commodity Futures Trading Commission to determine means of increasing trading volume on dairy futures markets.

Requires Secretary to conduct a study on the feasibility of creating an electronic market for cheese and other dairy products.

Section 5. Oversight of Cash Markets Affecting Federal Milk Marketing Orders.

Requires Secretary to prohibit noncompetitive practices on any cash market that may affect or influence the price of milk regulated under Federal Milk Marketing Orders. Noncompetitive practices include any activity conducted for the purpose or with the effect of manipulating prices on such a market.●

By Mr. CRAIG:

S. 259. A bill to amend the Fair Labor Standards Act of 1938 to adjust the maximum hour exemption for agricultural employees, and for other purposes; to the Committee on Labor and Human Resources.

THE FAIR LABOR STANDARDS ACT WATER DELIVERY ORGANIZATIONS FLEXIBILITY AMENDMENT ACT OF 1997

● Mr. CRAIG. Mr. President, I am introducing a bill today, which this body previously approved as an amendment to the first bill amending the Fair Labor Standards Act [FLSA] that the Senate passed in 1989. This bill would solve a problem with the interpretation of a provision of the FLSA, clarifying that the maximum hour exemption for agricultural employees applies to water delivery organizations that supply 75 percent or more of their water for agricultural purposes.

Representative MIKE CRAPO, of the Second District of Idaho, is today introducing an identical bill in the other body. Our bill would restore an exemption that was always intended by Congress.

Companies that delivery water for agricultural purposes are exempt from the maximum-hour requirements of the FLSA. The Department of Labor has interpreted this to mean that no amount of this water, however minimal, can be used for other purposes. Therefore, if even a small portion of the water delivered winds up being used for road watering, lawn and garden irrigation, livestock consumption, or construction, for example, delivery organizations are assessed severe penalties.

The exemption for overtime pay requirements was placed in the FLSA to protect the economies of rural areas. Irrigation has never been, and cannot be, a 40-hour-per-week undertaking. During the summer, water must be managed and delivered continually. Later in the year, following the harvest, the work load is light, consisting mainly of maintenance duties.

Our bill is better for employers, workers, and farmers. Winter compensation and time off traditionally have been the method of compensating for longer summer hours. Without this exemption, irrigators are forced to lay off their employees in the winter. Therefore, our bill would benefit employees, who would continue to earn a year-round income. It also would keep costs level, which would benefit suppliers and consumers.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 259

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

SECTION 1. AMENDMENT TO THE FAIR LABOR STANDARDS ACT OF 1938.

Section 13(b)(12) of the Fair Labor Standards Act of 1938 (29 U.S.C. 213(b)(12)) is amended by inserting after ''water'' the following: '', at least 75 percent of which is ultimately delivered''.●

By Mr. ABRAHAM (for himself, Mr. HATCH, Mrs. FEINSTEIN, Mr. GRASSLEY, Mr. KYL, Mr. HUTCHINSON, Mr. ROBERTS, and Mr. ROBB):

S. 260. A bill to amend the Controlled Substances Act with respect to penalties for crimes involving cocaine, and for other purposes; to the Committee on the Judiciary.

POWDER COCAINE PENALTIES LEGISLATION

● Mr. ABRAHAM. Mr. President, I introduce legislation that would increase penalties for distribution of powder cocaine. It would do this by applying existing mandatory minimum sentences of 5 and 10 years for this crime to a larger class of powder cocaine dealers.

Specifically, under current law, a dealer has to distribute 500 grams of powder to qualify for the 5-year minimum, and 5,000 grams to qualify for the 10-year minimum. My bill would lower the trigger quantities to 100 grams and 1,000 grams, respectively.

As many of you will recall, last Congress, the Sentencing Commission proposed a dramatic lowering of penalties for distribution of crack. That proposal would have taken effect automatically had Congress not stepped in to prevent it from doing so it by adopting legislation I introduced to block it.

The principal argument the Commission advanced for its proposal was that current law's sharp differentiation between sentences for crack cocaine and powder cocaine distribution is wrong. Therefore, the Commission argued, we should equalize these penalties by lowering penalties for crack cocaine.

As is clear from the fact that I sponsored legislation to prevent its recommendation from taking effect, I did not agree with the Commission's view that crack and powder penalties should be equalized. I also did not think that dramatically lowering crack penalties was a good idea for anyone—least of all for inner-city residents where crack is most freely available and where parents need the most help in protecting their kids from those peddling this poisonous drug.

At the same time, it also seemed to me that the Commission's report made some valid criticisms of the current disparity in the sentences. It just seemed to me that it drew the wrong conclusion from its criticisms, and that the answer to the problems it identified was not to lower crack sentences but to raise powder sentences.

That is why, at the same time I introduced my legislation to prevent the Commission's proposal from taking effect last Congress, I also introduced the same bill I am introducing today: to raise the sentences for those who deal powder cocaine, and thereby bring the quantity ratio down from 100–1 to 20–1.

I believe this proposal recognizes two realities: that crack is more dangerous and more addictive than powder, but that powder is very dangerous and a critical contributor to our very serious crack problem.

First, as both the Commission's own study of the matter and a recent medical study indicate, crack is a more dangerous and addictive form of cocaine than powder. Moreover because of its relative cheapness and ease of use, it is more attractive to first-time users, and especially children.

It is also common sense that with crack use finally stabilizing, we should not jeopardize what success we have had in combating it by dramatically lowering the penalties for selling it. That would surely invite new entrants into the crack market, and thereby lead to an increase in drug use and trigger a resurgence of violence among competing crack dealers.

On the other hand, as the Commission's report also pointed out, present law has resulted, at least occasionally, in insufficiently severe punishment of individuals at the top of crack distribution chains. These dealers distribute their product in powder rather than in crack form. And at least a few of them have received considerably less than the mandatory 5-year penalty. At the same time lower level dealers who worked for them and sold the final product, crack, were receiving at least 5-year sentences. This overly lenient treatment of the powder kingpins does not seem right.

Second and more generally, when the mandatory sentences for powder were originally set, they were set without knowledge of the extent of our crack problem and the contribution that powder cocaine makes to it. An increase therefore is warranted for that reason as well.

Finally, while I believe some differential in the quantities that trigger the same sentence for crack and powder is warranted, 100 to 1 seems too great. It is also unique in our drug laws' treatment of derivative versus source drugs, and that uniqueness is part of what has made it racially divisive.

My proposed legislation addresses all three of these points. Its lower threshold for powder mandatories would make it much less likely that a powder kingpin at the top of a crack-dealing chain would escape with a lower punishment than those further down in the chain.

By raising the sentences for powder significantly, the bill also takes into account the contribution that powder cocaine dealing generally makes to the crack market.

Finally, the change in the powder triggers makes the ratio of powder to crack necessary to trigger the same sentences 20 to 1 rather than 100 to 1. This would bring it in line with other similar differentials between source and derivative drugs, such as opium and heroin, which likewise have a 20 to 1 quantity ratio.

Mr. President, last Congress we withheld action on this question beyond blocking the Sentencing Commission's proposal because we were told that the Commission ought to be given another chance to devise a solution. I believe, however, that this Congress must act on this matter—whether with the help of the Commission or on its own. By introducing this legislation at this time, I want to make clear that I intend to see to it that we do so.●

By Mr. DOMENICI (for himself, Mr. FORD, Ms. SNOWE, Mr. THOMPSON, Mr. THOMAS, Mr. ROTH, Mr. MOYNIHAN, Mr. NICKLES, Mr. MCCAIN, Mr. CONRAD, Mr. ABRAHAM, Mr. FRIST, Mr. GRAMS, Mr. LUGAR, Ms. COLLINS, Mr. BREAUX Mr. DEWINE, Mr. BURNS, Mr. WARNER, Mr. ROBERTS, Mr. COATS, Mr. MACK, Mr. KEMPTHORNE, Mr. D'AMATO and Mr. ENZI):

S. 261. A bill to provide for biennial budget process and a biennial appropriations process and to enhance oversight and the performance of the Federal Government; to the Committee on the Budget and the Committee on Governmental Affairs, jointly, pursuant to the order of August 4, 1977, with instructions that if one committee reports, the other committee have 30 days to report or be discharged.

THE BIENNIAL BUDGETING AND APPROPRIATIONS ACT

Mr. DOMENICI. Mr. President, on behalf of Senator FORD and 23 other Senators, I rise to introduce the Biennial Budgeting and Appropriations Act, a bill to convert the budget and appropriations process to a 2-year cycle and to enhance oversight of Federal programs.

One of the greatest challenges facing the 105th Congress and President Clinton is to balance the Federal budget by 2002 and maintain balance through the next century when we will need to confront the very serious fiscal problems associated with an aging America. Balancing the Federal budget will require long-term planning, tough choices, and steadfast effort. These decisions should not be made, indeed I contend cannot be made, using the current fractionated annual budget process.

Congress should now act to streamline the system by moving to a 2-year, or biennial, budget process. This is the most important reform we can enact to streamline the budget process, to make the Congress a more deliberative and effective institution, and to make us more accountable to the American people.

Mr. President, moving to a biennial budget and appropriations process enjoys very broad support. President Clinton has proposed this reform. Presidents Reagan and Bush also proposed a biennial appropriations and budget cycle. Leon Panetta, who has

served as White House Chief of Staff, OMB Director, and House Budget Committee chairman, has advocated a biennial budget since the late 1970's. Former OMB and CBO Director Alice Rivlin has been arguing for a biennial budget for almost two decades. Other supporters include Senators LOTT, FORD, ROTH, THOMPSON, and GLENN. Last year, 42 Senators wrote our two Senate leaders calling for quick action to pass legislation to convert the budget and appropriations process to a 2-year cycle.

The most recent comprehensive studies of the Federal Government and the Congress have recommended this reform. The Vice President's National Performance Review and the Joint Committee on the Reorganization of Congress both recommended a biennial appropriations and budget cycle.

A biennial budget will dramatically improve the current budget process. The current annual budget process is redundant, inefficient, and destined for failure each year. The current process to develop, legislate, and implement the annual budget consumes 3 years: 1 year for the administration to prepare the President's budget, another year for the Congress to put the budget into law, and the final year to actually execute the budget.

Today, I want to focus just on the congressional budget process, the process of annually passing a budget resolution, authorization legislation, and 13 appropriation bills. The record clearly demonstrates the serious shortcomings of this process:

We have met the statutory deadline to complete a budget resolution only 3 times since 1974. In 1995, we broke the Senate record for the most rollcall votes cast in a day on a budget reconciliation bill.

The Congressional Budget Office just released its report on unauthorized appropriations. For fiscal year 1997, 121 laws authorizing appropriations have expired. These laws cover over one-third, or $89.6 billion, of appropriations for nondefense programs. Another 52 laws authorizing non-defense appropriations will expire at the end of fiscal year 1997, representing $31 billion more in unauthorized nondefense programs.

Since 1950 Congress has only twice met the fiscal year deadline for completion of all 13 individual appropriations bills to fully fund the Government.

While we have made a number of improvements in the budget process, the current annual process is redundant and inefficient. The Senate has the same debate, amendments, and votes on the same issue three or four times a year—once on the budget resolution, again on the authorization bill, and finally on the appropriations bill.

I recently asked the Congressional Research Service [CRS] to update and expand upon an analysis of the amount of time we spend on the budget. CRS looked at all votes on appropriations, revenue, reconciliation, and debt limit measures as well as budget resolutions. CRS then examined any other vote dealing with budgetary levels, Budget Act waivers, or votes pertaining to the budget process. For 1996, CRS found that the Senate devoted 73 percent of its time to the budget.

If we cannot adequately focus on our duties because we are constantly debating the budget in the authorization, budget, and appropriations process, just imagine how confused the American public is about what we are doing. The result is that the public does not understand what we are doing and it breeds cynicism about our Government.

Under the legislation I am introducing today, the President would submit a 2-year budget and Congress would consider a 2-year budget resolution and 13 2-year appropriation bills during the first session of a Congress. The second session of the Congress would be devoted to consideration of authorization bills and for oversight of Government agencies.

Most of the arguments against a biennial budget process will come from those who claim we cannot predict or plan on a 2 year basis. For two-thirds of the budget, we do not actually budget on an annual basis. Our entitlement and revenue laws are under permanent law and Congress does not change these laws on an annual basis. The only component of the budget that is set in law annually are the appropriated, or discretionary accounts.

Mr. President, the most predictable category of the budget are these appropriated, or discretionary, accounts of the Federal Government. I recently asked CBO to update an analysis of discretionary spending to determine those programs that had unpredictable or volatile funding needs. CBO found that only 4 percent of total discretionary funding fell into this category. Most of this spending is associated with international activities or emergencies. Because most of this funding cannot be predicted on an annual basis, a biennial budget is no more deficient than the current annual process. My bill will continue to allow supplemental appropriations necessary to meet these emergency and unanticipated requirements.

This legislation also will enhance oversight of Federal programs and activities. Frankly, the limited oversight we are now doing is not as good as it should be. We have a total of 34 House and Senate standing authorizing committees and these committees are increasingly crowded out of the legislative process. Under a biennial budget, the second year of the biennium will be devoted to examining Federal programs and developing authorization legislation. The calendar will be free of the budget and appropriations process, giving these committees the time and opportunity to fully review and legislate changes to Federal programs.

We also build on the oversight process by incorporating the new requirements of the Government Performance and Results Act of 1993 [GPRA] into the biennial budget process. The primary objective of this law is to force the Federal Government to produce budgets focused on outcomes, not just dollars spent. When the goal is to balance the budget, decisions must be made based on performance.

More specifically, GPRA requires agencies to develop strategic plans, performance plans, and performance goals. GPRA requires agencies to report on their actual performance in relation to these goals. Finally, GPRA requires the President to incorporate these performance plans into the President's budget submission to Congress.

At the beginning of each even-numbered year, this new biennial bill requires Federal agencies to submit their preliminary performance plans and any proposed legislation that will enhance the performance of Federal programs to authorizing committees. During these even-numbered years, the authorizing committees will review these performance plans and actual performance and develop authorization legislation geared to enhancing the performance of the Federal Government.

Mr. President, a biennial budget is not a panacea for all our budget woes. A biennial budget cannot make the difficult decisions that must be made in budgeting, but it can provide the tools necessary to make much better decisions. By moving to a biennial budget cycle, we can budget more effectively, strengthen oversight and watchdog functions, improve the efficiency of Government agencies, and work to balance the budget in an intelligent, fair, and deliberative manner.

Mr. President, I ask unanimous consent that a Washington Post article, a description of the bill, and a section-by-section analysis of the bill be made a part of the RECORD.

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

DESCRIPTION OF THE BIENNIAL BUDGETING AND APPROPRIATIONS ACT

Cosponsors (24): Senators Ford, Snowe, Thompson, Thomas, Roth, Moynihan, Nickles, McCain, Conrad, Abraham, Frist, Grams, Lugar, Collins, Breaux, DeWine, Burns, Warner, Roberts, Coats, Mack, Kempthorne, D'Amato, and Enzi.

The Domenici bill would convert the annual budget, appropriations, and authorization process to a biennial, or two-year, cycle.

FIRST YEAR: BUDGET AND APPROPRIATIONS

Requires the President to submit a two-year budget at the beginning of the first session of a Congress. The President's budget would cover each year in the biennium and planning levels for the four out-years. Converts the ''Mid-session Review'' into a ''Mid-biennium review''. The President would submit his ''mid-biennium review'' at the beginning of the second year.

Requires Congress to adopt a two-year budget resolution and a reconciliation bill (if necessary). Instead of enforcing the first fiscal year and the sum of the five years set out in the budget resolution, the bill provides that the budget resolution establish binding levels for each year in the biennium and the sum of the six-year period. The bill modifies the time frames in the Senate ten-year pay-as-you-go point of order to provide that legislation could not increase the deficit for the

biennium, the sum of the first six years, and the sum of the last 4 years.

Requires Congress to enact a two-year appropriations bill during the first session of Congress. The Domenici bill provides two fail-safe measures if there were an attempt to continue to appropriate funding on an annual basis. First, the Domenici bill provides a new majority point of order against appropriations bills that fail to cover two years. Second, if an appropriations bill were enacted that failed to appropriate money for the second year of the biennium, funding would be automatically appropriated at the first year's level. These fail-safe measures would not apply to supplemental appropriations bills to fund unanticipated needs such as emergencies.

Makes budgeting and appropriating the priority for the first session of a Congress. The bill provides a majority point of order against consideration of authorization and revenue legislation until the completion of the biennial budget resolution, reconciliation legislation (if necessary) and the thirteen biennial appropriations bills. An exception is made for certain ''must-do'' measures.

SECOND YEAR: AUTHORIZATION LEGISLATION AND ENHANCED OVERSIGHT

Devotes the second session of a Congress to consideration of biennial authorization bills and oversight of federal programs. The bill provides a majority point of order against authorization and revenue legislation that cover less than two years except those measures limited to temporary programs or activities lasting less than two years.

Requires the General Accounting Office (GAO) to give priority to requests for audits and evaluations of programs and activities during the second year of the biennium.

Modifies the Government Performance and Results Act of 1993 (GPRA) to incorporate the government performance planning and reporting process into the two-year budget cycle to enhance oversight of federal programs.

The Government Performance and Results Act of 1993 (GPRA) requires federal agencies to develop strategic plans, performance plans, and performance reports. The law requires agencies to establish performance goals and to report on their actual performance in meeting these goals. GPRA requires federal agencies to consult with congressional committees as they develop their plans. Beginning this year, GPRA will require all federal agencies to submit their strategic plans to the Office of Management and Budget, along with their budget submissions, by September 30 of each year. Finally, GPRA requires the President to include a performance plan for the entire government, beginning with the FY 1999 budget.

The Domenici bill modifies GPRA to place it on a two-year cycle along with the budget process. The bill also requires the authorizing committees to review the strategic plans, performance plans, and performance reports of federal agencies and to submit their views, if any, on these GPRA plans and reports as part of their views and estimates submissions to the budget committees.

The Domenici bill requires agencies to submit a preliminary performance plan and proposed authorization legislation to the relevant authorizing committees by March 31 of even-numbered years. In developing proposed authorization legislation, the bill directs agencies to include in their proposed legislation, changes that will enhance agencies' ability to meet their strategic and performance goals.

BIENNIAL BUDGETING AND APPROPRIATIONS ACT—SECTION-BY-SECTION ANALYSIS

Section 1 states the title of the legislation—the ''Biennial Budgeting and Appropriations Act''.

Section 2 amends section 300 of the Congressional Budget and Impoundment Control Act to revise the timetable to reflect a biennial budget process. In general, the revised timetable is similar to the current timetable except that most of the milestones only apply to the first session of a Congress. The timetable is modified to extend the deadline for completion of the budget resolution to May 15th and to extend the deadline for completion of reconciliation legislation to August 1st. The revised timetable contains two milestones in the second session: a February 15th reporting requirement for the CBO annual report on the budget and an end of session deadline for completion of action on authorization legislation. This section also amends the timetable to provide a special schedule in years a new President is elected. Generally, deadlines are extended by 6 weeks to give a new President more time to prepare and submit his budget.

Section 3 includes most of the other amendments made to the Congressional Budget and Impoundment Control Act.

Section 3(a) amends section 2 of the Act to make a conforming change to the statement of the purposes of the Act. Section 3(b) adds a definition for ''biennium'' and makes a conforming change to the definition of a budget resolution.

Section 3(c) amends section 301 to require the Congress to complete action on a biennial budget resolution by May 15th of each odd-numbered year; to require the budget resolution to cover the biennium, and each of the ensuing four years; to make conforming changes regarding requirements for hearings and reports on budgets; to make other conforming changes to the section; and, to make conforming changes to the section heading and the table of contents of the Act.

Section 3(d) amends section 302 of the Budget Act, regarding committee allocations, to require the conference report on a budget resolution to include an allocation of budget authority and outlays to each committee for each year in the biennium and the total of the biennium and the four succeeding fiscal years. This subsection also makes conforming changes to section 302(f).

Section 3(e) amends section 303 of the Budget Act, regarding the point of order against spending and revenue legislation affecting future fiscal years, to make a conforming change to provide that such legislation cannot be considered until the budget resolution for a biennium is adopted. This subsection also drops an exception in the Senate that exempts appropriations measures providing an advance appropriation for the two fiscal years following the budget year from this point of order.

Section 3(f) makes conforming changes to section 304 of the Budget Act, regarding revisions of budget resolutions. Maintains current law that allows Congress to revise the budget resolution at any time.

Section 3(g) amends section 305 to make a conforming change regarding a reference to the budget resolution.

Section 3(h) and (i) amend sections 307 and 309 to make conforming changes regarding the deadlines for completion of appropriations bills.

Section 3(j) amends section 310 to make conforming changes regarding reconciliation.

Section 3(k) amends section 311 to provide that a point of order will lie against any legislation that would cause the total budget authority, outlay, Social Security outlay, or Social Security revenue levels to be breached in either fiscal year of the biennium or that would cause revenue, Social Security revenue, or Social Security outlays levels to breached for the sum of the biennium and the four outyears covered by the resolution. Currently, the budget resolution all budget authority and outlays are enforced for the first year covered by the budget resolution and Social Security outlay, Social Security revenue, and total revenues are enforced for the five years covered by the budget resolution.

Section 3(l) amends section 401(b)(2) to make a conforming change regarding the referral of certain entitlement legislation to the Appropriations Committee.

Section 3(m) amends section 603 to make a conforming change regarding automatic allocations to the House Appropriations Committee if the budget resolution is not adopted by May 15th.

Section 4 amends the Senate pay-as-you-go point of order that prohibits consideration of legislation that would increase the deficit over a ten year period. The current Senate pay-as-you-go point of order prohibits consideration of legislation that would increase the deficit in the first year, the sum of the first five years, or the sum of the last five years. Section 4 modifies this point of order to prohibit consideration of legislation that would increase the deficit for the sum of the first two years (the biennium), the sum of the first six years, or the sum of the last four years.

Section 5 amends the relevant sections of Title 31 of the U.S. Code regarding materials the President's budget submission and related documents.

Section 5(a) amends section 1101 to add a definition of ''biennium''.

Section 5(b) amends section 1105 to require the President to submit the budget the first Monday of February for every odd-numbered year (except the schedule in section 300(b) of the Budget Act applies for years in which a new President is elected). Section 5(b) also amends a number of requirements in section 1105 to conform the President's budget to a biennial budget. Among these changes, the President's budget would have to propose levels for each fiscal year in the biennium and projections for the four succeeding years.

Section 5(c) amends section 1105(b), regarding estimated expenditures and proposed appropriations for the legislative and judicial branches, to require the submittal of these proposals to the President by October 16th of even-numbered years.

Subsections (d) and (e) of section 5 make conforming changes to section 1105 regarding the President's recommendations if there is a proposed deficit or surplus and capital investment analyses.

Section 5(f) amends section 1106 to change the requirements regarding the President's ''Mid-session Review''. Current law requires the President to submit the Mid-session Review before July 16 of each year. Section 5(f) requires the President to submit a ''Mid-biennium Review'' before February 15 of each even-numbered year. With this modification, the President will submit his biennial budget at the beginning of each odd-numbered year and provide updated information on the budget at the beginning of each even-numbered year.

Section 5(g) amends section 1109 to make conforming changes to require the President to submit current services estimates for the upcoming biennium and to require the Joint Economic Committee to submit an economic evaluation to the Budget Committee as part of its views and estimates report. This subsection also makes two technical corrections to require the President to submit the current services information with his budget

submission and to require the Joint Economic Committee to submit its economic evaluation within 6 weeks of the President's budget submission.

Section 5(h) makes amendments to provisions regarding year ahead requests on authorization legislation to require the President to submit requests for authorization legislation by March 31st of even-numbered years.

Section 5(i) amends section 1119 to conform a requirement regarding agency budget justifications and consulting services information to the biennial budget submission.

Section 6 amends section 105 of Title I of the U.S. Code regarding the form and style of appropriations Acts to require that they cover two years.

Section 7 adds a new section 314 to the Budget Act that establishes two new points of order in the Congress against authorization legislation. The first point of order prohibits consideration of authorization legislation that covers less than 2 years except for temporary activities. The second point order prohibits consideration of authorization or revenue legislation until the Congress has completed action on the biennial budget resolution, biennial appropriations bills, and all reconciliation bills. These two points of order do not apply to appropriations measures, reconciliation bills, privileged matters, treaties, or nominations. This point of order can be waived by a simple majority.

Section 8 amends section 717 of title 31 of the U.S. Code to require the General Accounting Office to give priority during the second session of a Congress to requests for Federal program audits and evaluations.

Section 9 establishes a stopgap funding mechanism to provide funding authority for the second year if Congress enacts an appropriations bill that only funds one year. This automatic funding authority does not apply to supplementals or continuing resolutions.

Section 9(a) amends chapter 13 of title 31 to add a new section 1311. Section 9(b) amends the table of contents of chapter 13 of title 31 to add the new section 1311.

Section 1311(a)(1) provides that if Congress enacts a regular appropriation bill in an odd-numbered year that fails to provide funding for the second year of the biennium, the second year is automatically funded at the first year's level. Section 1311(a)(2) provides that in determining the level of funding for the first year, the President must take into account sequester reductions made pursuant to the Balanced Budget and Emergency Deficit Control Act and cancellations made pursuant to the Line Item Veto Act. Section 1311(a)(3) provides that the automatic funding authority remains in effect only for the duration of the second fiscal year.

Section 1311(b) makes the automatic appropriation in the second year subject to the same terms and conditions Congress established for the first year's appropriation.

Section 1311(c) provides that the funding authority shall not apply to a project or activity if another law prohibits funding for that activity.

Section 1311(d) defines ''regular appropriation bill'' as any one of the thirteen regular appropriations bills.

Section 10 amends the Government and Performance and Results Act of 1993 (GPRA) to incorporate GPRA into the biennial budget cycle.

The Government Performance and Results Act of 1993 (GPRA) requires federal agencies to develop strategic plans, performance plans, and performance reports. Strategic plans set out the agencies' missions and general goals. Performance plans lay out the specific quantifiable goals and measures. Performance reports compare actual performance with the goals of past performance plans.

GPRA currently requires federal agencies to consult with congressional committees as they develop their strategic plans. Beginning this year, GPRA will require all federal agencies to submit their strategic and performance plans to the Office of Management and Budget, along with their budget submissions, by September 30 of each year. Finally, GPRA requires the President to include a performance plan for the entire government, beginning with the FY 1999 budget.

Section 10(a) and (b) amend section 306 of title 5 and section 115 of title 31 to require agencies to prepare performance plans every two years, in conjunction with the President's development of a biennial budget, and strategic plans every four years (covering a six-year period). This subsection also requires federal agencies to submit a preliminary draft of the performance plans to the relevant authorizing committees by March 31 of even-numbered years. Subsection (b) also requires agencies to include an executive summary of their 10 most important performance goals and to consult with Congress in developing these priority goals. The purpose of this change is to require agencies to highlight the crucial goals for Congress.

Section 10(c) amends section 1105(a)(30) of title 31 to require the President's budget to include aggregate performance report for the executive branch starting with the FY 2002–03 budget. Currently, OMB must submit an aggregate performance plan (known as the Federal Government performance plan) with the President's budget, but GPRA does not require them to prepare a performance report, indicating how they measured up to their goals.

Section 10(d) amends section 1116 of title 31 to make two changes. First, this subsection requires agencies to report to Congress on statutory barriers that limit their ability to meet their mission statement and to propose legislative recommendations to modify or eliminate such barriers. Second, this subsection adds subsections (g) and (h) to section 1116. Subsection (g) would require agencies to include an executive summary in their performance report describing actual results in relation to their 10 most important performance goals. Subsection (h) requires OMB's overall performance report to compare actual results with the goals established in previous federal government performance plans.

Section 10(e) amends section 301(d) of the Budget Act to require Congressional committees to review the strategic plans, performance plans, and performance reports of agencies in their jurisdiction. Committees may then provide their views on the plans or reports to the Budget Committee, if they so choose, as part of their views and estimates report.

Section 10(f) provides that the amendments shall take effect on March 31, 1998.

Section 11 amends the Budget Act to add a new section 315 that provides a majority point of order against consideration in any odd-numbered year of a regular appropriations bill that fails to fund both years of the biennium. This point of order does not apply to supplementals or continuing resolutions.

Section 12 requires OMB to conduct a study within 6 months of enactment of the feasibility of converting the fiscal year to a two year period.

Section 13 provides an effective date for the Act and a transition period. Subsection (a) generally provides that the Act takes effect on January 1, 1998. Section 13(b) provides a transition year to the biennial cycle by requiring the authorizing committees to start consideration of two-year authorization legislation in 1997. The result is that the authorizing committees will act on legislation for the fiscal year 2000–2001 biennium in calendar year 1997. The budget and appropriations committees will then follow by developing a budget resolution and 13 appropriations bills for the fiscal year 2000–2001 biennium in calendar year 1998.

[From the Washington Post, Dec. 8, 1996]

MAKE IT A TWO-YEAR BUDGET

(By Pete V. Domenici)

Democrats and Republicans are pledging bipartisanship cooperation in fashioning this year's federal budget. We should begin by abandoning the outmoded and disorderly annual budget and appropriation process and move to biennial budgeting and appropriating to stabilize our budget decisions. This is the most important reform we can adopt to improve the process, provide for oversight and careful deliberation, and make us accountable to the American people.

This is not a partisan issue. President Clinton, Senate Republican Leader Trent Lott and Democratic Whip Wendell Ford support biennial budgeting and appropriating. It also was recommended in 1993 by the bipartisan Joint Committee on Reorganization of Congress.

Under a biennial budget, the president would submit a two-year budget and Congress would consider a two-year budget resolution and 13 two-year appropriation bills during the first session of a Congress. The second session would be devoted to consideration of authorization bills and for oversight of government agencies.

A biennial budget would dramatically improve the current budget process. It would allow legislators to legislate intelligently. It would provide for oversight of what has been legislated, and it would cut down on the tremendous annual effort that now is devoted to developing and implementing the annual budget.

Consider that each year program managers interrupt their work to develop detailed documents to propose and support their budget. That budget must be reviewed by agency budget officers and senior agency officials before it is presented to the Office of Management and Budget (OMB). After OMB's review and the president's approval, the entire budget is presented to Congress. The executive branch's preparation and review of the budget takes a year.

After the budget is submitted to Congress; the agencies have to track and respond to inquiries from Congress as it considers the budget through the budget resolution, authorizing legislation and, ultimately, through appropriations legislation. The congressional budget consumes another year.

To understand how much effort goes into preparation of the annual budget, one need only look at one agency's budget justification in the annual process. Let's take the civil works program of the Army Corps of Engineers. The corps' civil works budget amounts to roughly $3.7 billion, or 0.2 percent of the total federal budget. Each year

the corps prepares and submits to the Appropriations Committee an eight-volume budget justification amounting to 2,005 pages!

Moreover, our current budget process—in which Congress tries to hold hearings, markups and floor action annually on authorization, budget and appropriations legislation—makes it extremely difficult for a member of Congress to fully meet all his or her obligations, much less take the necessary time to fully participate in each of these activities.

While an improvement over what went before, the current budget process is redundant and inefficient. Yogi Berra once observed that ''it's never over until it's over,'' but it seems too often that the budget process is never over. The Senate has the same debate and votes on the same issue three or four times a year—once on the budget resolution, again on the authorization bill and few amendments on the floor, and again on the appropriations bill. In 1993 I found that the Senate devotes roughly 40 percent of its time debating budget resolutions, reconciliation and appropriations bills.

In addition to the time-consuming nature of the budget process, Congress regularly misses its own deadlines and guidelines, which generates cynicism about our work. In the 22-year history of the Budget Act, we have met the statutory deadline to complete a budget resolution only three times. Last year, we broke the Senate record for the most roll-call votes cast in a day on a budget reconciliation bill.

Since 1950, Congress only twice has met the fiscal year deadline for completion of all 13 individual appropriations bills to fully fund the government. Congress usually governs in the breach, rushing to complete action on omnibus continuing resolutions in the best years or government shutdowns in the worst.

A biennial budget, while not a panacea, could improve the budget process dramatically. In 1987 I asked 50 agencies about their views on the biennial budget. Thirty-seven agencies supported a biennial budget. None opposed it. The agencies generally responded that they could operate under a biennial budget, and that it would save money for their operations.

Based on a 1993 congressional study, only 4 percent of discretionary funding—or $18.5 billion of the $541 billion appropriated in FY 1993—required annual funding because of unpredictable funding patterns.

If we have a two-year process, we can deal with another concern—that Congress does not spend enough time reviewing the operations of the federal government. Frankly, the limited oversight we are doing now is not as good as it should be.

Authorizing committees must increase their focus on their oversight role. Implementing the Government Performance and Results Act will begin to force the federal government to produce budgets next year focused on outcomes, not just dollars spent. When the goal is to balance the budget, decisions must be made based on performance. With a biennial budget, we would create an atmosphere that encourages and rewards better oversight, because the entire second year of any Congress would be devoted to authorizations and reviewing program performance.

By moving to a two-year budget and appropriations cycle, Congress can inject stability into a sometimes chaotic system, strengthen congressional oversight and watchdog functions, improve the efficiency of government agencies and—finally, it is hoped—increase the public's confidence that the achievement of balanced budget has been done intelligently, deliberatively and fairly.

Mr. MCCAIN. Mr. President, I rise in strong support of the Biennial Appropriations and Budget Act—A bill introduced today by Senator DOMENICI, the chairman of the Budget Committee. I am pleased to be an original cosponsor of this important legislation.

Under a biennial budget, the President would submit a 2-year budget in the first session of a Congress. The priority in the first session of the Congress would be completion of the biennial budget resolution and biennial appropriations bills. The second session would be reserved for authorization legislation and enhanced oversight. The planning and performance requirements of the Government Performance and Results Act of 1993 would be incorporated into the budgeting process as well.

I have long advocated changing our budget process in this manner. As a matter of fact in 1993, I introduced similar legislation. Changing our budget process would give Congress more time to develop and implement long-term budget plans. In addition, the 2-year cycle would allow more time for oversight and thorough evaluation of programs and spending.

Our current process is simply not working. Only three times in the past 20 years has Congress passed the budget resolution on time, and this is only the first step in congressional action on the budget. Only twice since 1950, has Congress met the fiscal year deadline for completion of all 13 individual appropriations bills. Most of the time Congress is rushing to pass appropriations bills, continuing resolutions, or omnibus spending bills at the last minute, trying to avoid a Government shutdown. This is not how we should be managing the power of the purse.

This idea is not new. President Clinton's former Chief of Staff and OMB Director, Leon Panetta, introduced the first biennial budget bill in 1977 when he was a Congressman. Vice President GORE strongly endorsed this idea in his National Performance Review. In his book, ''Creating a Government that Works Better and Costs Less,'' GORE states, ''Biennial budgeting will not make our budget decisions easier, for they are shaped by competing interests and priorities. But it will eliminate an enormous amount of busy work that keeps us from evaluating programs and meeting customer needs.''

Congress' failure to meet our prescribed deadlines, in current budget process, contributes to the American people's cynicism about politics. The time has come to recognize that our current budget process is broken and we must find a way to fix it. Biennial budgeting is an important first step toward fixing our current system by making our budget process more efficient and streamlined. I hope that Congress will act on this important legislation expeditiously.

Mr. THOMAS. Mr. President, it is an honor to join the chairman of the Budget Committee, Senator DOMENICI, in introducing legislation to create a 2-year budget and appropriations process. Senator DOMENICI has worked long and hard on this issue and I am hopeful that we can finally enact this commonsense reform this year.

The current budget process is breaking down. Congress and the executive branch spend entirely too much time on budget issues. Since the most recent budget process reform in 1974, Congress has consistently failed to complete action on the Federal budget before the start of the fiscal year and, as a result, has increasingly relied on omnibus spending measures to fund the Federal Government. In fact, since 1977, Congress has passed over 60 continuing resolutions just to keep the Federal Government open.

The budget resolution, reconciliation bill, and appropriations bills continue to become more time consuming. In the process, authorizing committees are being squeezed out of the schedule. There are too many votes on the same issues and too much duplication. In the end, this time could be better spent conducting vigorous oversight of Federal programs which currently go unchecked, exacerbating the Federal budget deficit.

In response to these problems, last Congress I introduced legislation that would create a biennial budget process. I am pleased to continue this effort by joining Senator DOMENICI in offering this bill. It will rectify many of the problems regarding the current process by promoting timely action on budget legislation. In addition, it will eliminate much of the redundancy in the current budget process. This legislation does not eliminate any of the current budget processes—each step serves an important role in congressional deliberations. However, by making decisions once every 2 years instead of annually, the burden should be significantly reduced.

Perhaps most importantly, biennial budgeting will provide more time for effective congressional oversight, which will help reduce the size and scope of the Federal Government. Congress simply needs more time to review existing Federal programs in order to determine priorities in our drive to balance the budget.

Another benefit of a 2-year budget cycle is its effect on long-term planning. A biennial budget will allow the executive branch and State and local governments, all of which depend on congressional appropriations, to do a better job making plans for long-term projects.

Two-year budgets are not a novel idea. Nor will biennial budgeting cure all of the Federal Government's ills. However, separating the budget session from the oversight session works well across the country in our State legislatures. It is a solid first step toward restoring some fiscal accountability in our Nation's Capital. I am hopeful this bill will be a catalyst for action on this commonsense, good Government reform.

Mr. FORD. Mr. President, I am pleased to be an original cosponsor of

the Biennial Budgeting and Appropriations Act. I am a full-fledged supporter of a 2-year budget cycle—an issue I have been championing since 1981. I believe in its potential as strongly now as I did then. It's an idea whose time has come.

There are several advantages to a 2-year budget cycle. Foremost, there will be a savings of time and money. Congress currently debates spending priorities and funding decisions not only every year, but several times within 1 year. By limiting budget action to only one session of each Congress, we eliminate repetitive votes on budget priorities and spending allocations. We also allow the executive branch and recipients of Federal aid, such as State and local governments, to better manage Federal dollars to get more cents out of the dollar.

Biennial budgeting allows for greater planning and more deliberate spending decisions. Too often, Congress has padded the budget resolution with spending for anticipated reforms and new initiatives only to find that action is not completed on the authorization before the new fiscal year begins. Unfortunately, those funds provided in the budget cannot be deleted or reserved for the next fiscal year, but must be spent on other programs.

A 2-year budget, with one session reserved specifically for oversight and authorizations, will give Congress the time to enact responsible spending proposals before the adoption of a budget resolution and appropriations bill. A 2-year budget cycle will give the executive branch and State and local governments, 2 years to plan for the most efficient use of Federal dollars.

This legislation will give Congress the opportunity to review spending decisions, and allow the executive branch to conduct compliance review. Too often we hear that once a Federal program is created, it will be funded into eternity. Congress simply needs more time to review existing spending programs to determine whether they should be modified, expanded, or replaced.

The Biennial Budgeting and Appropriations Act provides greater funding certainty for State and local governments. Our elected counterparts in the States must plan their budgets in large part around Federal spending decisions. As we know from last year's debate on the budget, Congress all too often misses deadlines and does not complete action before the beginning of the fiscal year. State and local governments simply cannot put their budget deliberations on automatic pilot while Congress completes its work and they cannot be expected to efficiently carry out Federal spending programs if they lack the certainty that funds will be provided on time.

While a 2-year budget won't replace the tough decisionmaking necessary for deficit reduction, it will make our work on the deficit and the Federal budget more efficient and more effective. When I was Governor of Kentucky, 2-year budgeting helped us to lay out a master plan for the entire State. And that master plan enabled agencies, local governments, and constituency groups to do long-term planning—planning that led to greater efficiency, overall cost savings, and equally important, peace of mind about future funding. We need this sort of planning on the Federal level. Ask any constituent what some of their top concerns are, and most, if not all, will talk about wasteful Government spending. If we truly want to address their concerns, I say the 2-year budget is the way to go and I am pleased to join Senator DOMENICI and others in pushing it forward with renewed vigor this year.

Mr. THOMPSON. Mr. President, I am pleased to join Senator DOMENICI as a cosponsor of this important legislation. I supported a similar measure in the 104th Congress and held a hearing last year in the Committee on Governmental Affairs. The issue has been debated over a number of years without success. However, the 105th Congress presents a new opportunity. As chairman of the Governmental Affairs Committee, I pledge my support in moving this measure to the full Senate.

The bill being introduced today has the fundamental goal of moving both the budget and appropriations process to a 2-year cycle—just once at the beginning of each Congress. In addition, it will link program results obtained under the Government Performance and Results Act [GPRA] to the budget process. Congressional committees will be required to review the GPRA reports and provide views and comments in conjunction with their comments on the budget.

Biennial budgeting would provide more time for Congress to conduct greater oversight and indepth evaluations of existing programs. We need to take more time to find out what is working and what is not. Congress should not just rely on good intentions when it passes new measures. We must ensure that the laws we write do provide the benefits and services as envisioned. The current budget process leaves us with far too little time to devote to thoughtful and systematic oversight of Federal programs, and far too little time to develop and consider long-term policy initiatives.

Another important reason I support 2-year budgeting, in addition to enhanced oversight, I believe the bill would provide Members of Congress with more time to spend with the people they represent, receiving their views and insights on Government programs, services, and pending legislation. Freedom from dealing with the budget on an annual basis has the ability to move us closer to a citizen legislature as envisioned by the Founding Fathers. We have no greater responsibility than representing the people of our State. To do so, we need to spend time at home.

On the issue biennial budgeting, once again the States are leading the way, with more than 20 States currently using some form of it. I firmly believe it is time for Washington to recognize the value in this and enact this bill promptly. I support the Biennial Appropriations and Budget Act of 1997, and encourage all my colleagues to do the same. It is an idea whose time has come.

By Mr. WELLSTONE:

S. 262. A bill to amend title 18, United States Code, to provide for the prospective application of certain prohibitions relating to firearms; to the Committee on the Judiciary.

FIREARMS LEGISLATION

● Mr. WELLSTONE. Mr. President, today I am introducing legislation that will make clear that from now on, if you are convicted of beating your wife, your husband, or your children, your actions will result in you forfeiting your firearm privileges, no matter who you are.

The bill amends the Federal law that prohibits someone with a misdemeanor conviction for domestic violence from possessing firearms or ammunition so that the law is applied prospectively only, from the date of enactment. I urge my colleagues to support this bill. We know that all too often the only difference between a battered woman and a dead woman is a batterer with a gun. Many of you are familiar with facts I have stood here and recited in the past: Four women a day are killed at the hands of their batterer;

The California Department of Justice Law Enforcement reported in 1994 that 68 percent of the murder victims known to have been killed by an intimate were killed by firearms, 68 percent;

The likelihood of a woman dying during a domestic assault is directly related to the type of weapon available. When a firearms is available, the assault is three times more likely to end in death than an assault with a knife. If no weapon is available the dispute is 23 times less likely to end in death;

Fifty-seven percent of children under 12 who are murdered are killed by a parent.

These are statistics based only on what is reported. We know that there are people watching who are victims of abuse in their own homes. It is happening to women that you know in your work place, in your church or synagogue and your neighborhood.

Domestic violence is the most underreported crime in the country.

We will not tolerate the violence.

We will not ignore the violence.

We will not say that it is someone else's responsibility.

I urge my colleagues to support this bill.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 262

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

SECTION 1. PROSPECTIVE APPLICATION OF THE DOMESTIC VIOLENCE MISDEMEANOR CONVICTION FIREARMS PROHIBITION.

(a) FINDINGS.—Congress makes the following findings:

(1) Spouses, ex-spouses, and current and former boyfriends commit over 1,000,000 violent crimes against women each year, including assault, rape, and murder.

(2) Approximately 28 percent of all women murdered in the United States each year are killed by current or former husbands or boyfriends.

(3) Weapons are used in 30 percent of domestic violence incidents.

(4) Domestic violence calls are one of the largest categories of calls to police each year, and, in some locations, up to one-third of all police time is spent responding to domestic calls.

(5) Studies show that police are more likely to respond to a reported incident within 5 minutes if the offender is a stranger to the victim and that, police are more likely to take a formal report with respect to an incident in which the offender is a stranger to the victim.

(6) Studies show that only approximately 10 percent of spouses who are abused ever call the police, in spite of the fact that conjugal assaults account for 12 percent of all assaults that result in serious injury, 16 percent of all assaults requiring medical care, and 18 percent of assaults that result in the loss of at least a full day of work.

(7) Data compilation suggests that injuries in all domestic assaults are at least as severe as those suffered in 90 percent of violent felonies, although the overwhelming number of domestic violence injuries are considered to be only misdemeanors in most States.

(8) In the 104th Congress, Congress amended the Federal law that regulates the lawful transfer and possession of firearms and ammunition to provide that an individual's conviction of a misdemeanor crime of domestic violence will prohibit the individual from possessing any firearm or ammunition and will prohibit others from licensing or transferring a firearm or ammunition to that person.

(9) The term ''misdemeanor crime of domestic violence'' is defined in Federal law as a Federal or State misdemeanor crime that ''has, as an element, the use or attempted use of physical force, or the threatened use of a deadly weapon, committed by a current or former spouse, parent, or guardian of the victim, by a person with whom the victim shares a child in common, by a person who is cohabiting with or has cohabited with the victim as a spouse, parent, or guardian, or by a person similarly situated to a spouse, parent, or guardian of the victim''.

(10) For purposes of Federal law, to be considered convicted to be of a misdemeanor crime of domestic violence, a person must—

(A) have been represented by counsel or knowingly waived representation; and

(B) have been tried by a jury or knowingly waived trial by a guilty plea or otherwise if entitled to a jury trial for the offense at issue.

(11) There are exceptions to the new Federal law that may apply to an individual determined to have been convicted of a misdemeanor crime of domestic violence, if ''the conviction has been expunged or set aside, or is an offense for which the person has been pardoned or has had civil rights restored (if the law of the applicable provision provides for the loss of civil rights under such an offense) unless the pardon, expungement, or restoration of civil rights expressly provides that the person may not ship, transport, possess, or receive firearms''.

(12) Congress clearly intended for this Federal law to apply to peace officers. The general exception to the law for firearms and ammunition that are issued for the use of ''the United States or any department or agency thereof or any State or any department, agency, or political subdivision thereof,'' does not apply to individuals convicted of a misdemeanor crime of domestic violence.

(b) UNLAWFUL ACTS.—Subsections (d)(9), (g)(9), and (s)(3)(B)(i) of section 922 of title 18, United States Code, are each amended by inserting'', on or after September 30, 1996,'' before ''of a misdemeanor''.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect as if included in the amendments made by the first section designated as section 658 of Public Law 104–208.●

ADDITIONAL COSPONSORS

S. 4

At the request of Mr. ASHCROFT, the name of the Senator from Montana [Mr. BURNS] was added as a cosponsor of S. 4, a bill to amend the Fair Labor Standards Act of 1938 to provide to private sector employees the same opportunities for time-and-a-half compensatory time off, biweekly work programs, and flexible credit hour programs as Federal employees currently enjoy to help balance the demands and needs of work and family, to clarify the provisions relating to exemptions of certain professionals from the minimum wage and overtime requirements of the Fair Labor Standards Act of 1938, and for other purposes.

S. 5

At the request of Mr. ASHCROFT, the name of the Senator from Vermont [Mr. JEFFORDS] was added as a cosponsor of S. 5, a bill to establish legal standards and procedures for product liability litigation, and for other purposes.

S. 10

At the request of Mr. HATCH, the name of the Senator from Montana [Mr. BURNS] was added as a cosponsor of S. 10, a bill to reduce violent juvenile crime, promote accountability by juvenile criminals, punish and deter violent gang crime, and for other purposes.

S. 15

At the request of Mr. LAUTENBERG, his name was added as a cosponsor of S. 15, a bill to control youth violence, crime, and drug abuse, and for other purposes.

S. 25

At the request of Mr. FEINGOLD, the name of the Senator from Michigan [Mr. LEVIN] was added as a cosponsor of S. 25, a bill to reform the financing of Federal elections.

S. 29

At the request of Mr. LUGAR, the names of the Senator from Arkansas [Mr. HUTCHINSON], the Senator from Indiana [Mr. COATS], and the Senator from Kansas [Mr. ROBERTS] were added as cosponsors of S. 29, a bill to repeal the Federal estate and gift taxes and the tax on generation-skipping transfers.

S. 30

At the request of Mr. LUGAR, the names of the Senator from Arkansas [Mr. HUTCHINSON] and the Senator from Kansas [Mr. ROBERTS] were added as cosponsors of S. 30, a bill to increase the unified estate and gift tax credit to exempt small businesses and farmers from inheritance taxes.

S. 31

At the request of Mr. LUGAR, the names of the Senator from Arkansas [Mr. HUTCHINSON], the Senator from Indiana [Mr. COATS], and the Senator from Kansas [Mr. ROBERTS] were added as cosponsors of S. 31, a bill to phase-out and repeal the Federal estate and gift taxes and the tax on generation-skipping transfers.

S. 61

At the request of Mr. LOTT, the names of the Senator from Arkansas [Mr. HUTCHINSON], the Senator from New York [Mr. D'AMATO], the Senator from Alabama [Mr. SHELBY], the Senator from Louisiana [Mr. BREAUX], the Senator from Maryland [Mr. SARBANES], the Senator from Mississippi [Mr. COCHRAN], and the Senator from Hawaii [Mr. AKAKA] were added as cosponsors of S. 61, a bill to amend title 46, United States Code, to extend eligibility for veterans' burial benefits, funeral benefits, and related benefits for veterans of certain service in the United States merchant marine during World War II.

S. 72

At the request of Mr. KYL, the name of the Senator from Michigan [Mr. ABRAHAM] was added as a cosponsor of S. 72, a bill to amend the Internal Revenue Code of 1986 to provide a reduction in the capital gain rates for all taxpayers, and for other purposes.

S. 74

At the request of Mr. KYL, the name of the Senator from Michigan [Mr. ABRAHAM] was added as a cosponsor of S. 74, a bill to amend the Internal Revenue Code of 1986 to limit the tax rate for certain small businesses, and for other purposes.

S. 76

At the request of Mr. KYL, the name of the Senator from Michigan [Mr. ABRAHAM] was added as a cosponsor of S. 76, a bill to amend the Internal Revenue Code of 1986 to increase the expensing limitation to $250,000.

S. 140

At the request of Mr. FAIRCLOTH, the name of the Senator from North Carolina [Mr. HELMS] was added as a cosponsor of S. 140, a bill to improve the Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

S. 143

At the request of Mr. DASCHLE, the names of the Senator from Iowa [Mr. HARKIN], the Senator from Vermont [Mr. LEAHY], and the Senator from