

### ROUTING AND RECORD SHEET

**SUBJECT:** (Optional)

Amendments 946 and 948 to S.328 (Prompt Payment Act)

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Chief, Procurement Management Staff, OL	<input type="text"/>	<b>DATE</b>

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1. (Officer designation, room number, and building)	DATE		OFFICER'S INITIALS	COMMENTS (Number each comment to show from whom to whom. Draw a line across column after each comment.)
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1. Liaison Division, OCA Attn: <input type="text"/> 7B24 Headquarters				
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MEMORANDUM FOR: Liaison Division, OCA

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ATTENTION:



FROM:

Chief, Procurement Management Staff, OL

SUBJECT: Amendments 946 and 948 to S.328 (Prompt Payment Act)

1. We have no objection to the inclusion of the subject amendments within the referenced legislation.

2. Amendment 946 allows for alternative payment provision to a standard payment clause which would otherwise be required. The approach allowed by this amendment would have nominal impact on Agency operations.

3. Amendment 948 allows for the creation of a Presidential Advisory Panel to review Federal policies and practices relative to this legislation. Assuming that we would not be required to significantly interact with this Panel, we have no objection to this amendment.

STAT



SUBJECT: Amendments 946 and 948 to S.328 (Prompt Payment Act)

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OL/PMS,  (26 Oct 87)

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10/15/87

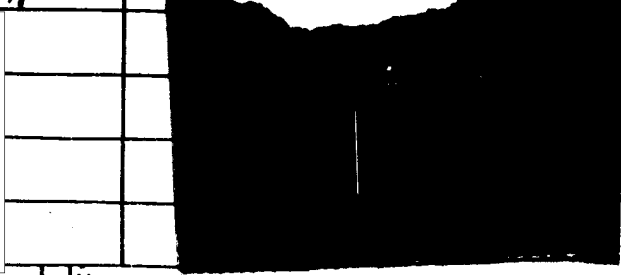
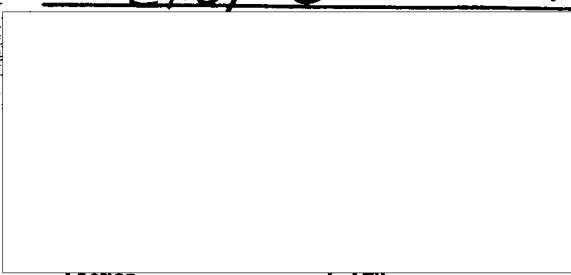
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**REMARKS**

I still expect this to come to a House vote soon.

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OPTIONAL FORM 41 (Rev. 7-76)  
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**100th Congress, 1st Session**

	House	Senate
<b>Democrats</b>	<b>258</b>	<b>54</b>
<b>Republicans</b>	<b>177</b>	<b>46</b>
<b>Vacancies</b>	<b>0</b>	<b>0</b>

that established various economic sanctions against South Africa. The law further required the president to recommend additional sanctions if he found that progress was not being made toward ending apartheid by the Pretoria government.

In his report to Congress, required within one year of the law's original enactment, Reagan said South Africa is no closer toward abolishing apartheid than it was a year ago. He added that there is "very little hope for optimism about the immediate future." But Reagan, in resisting further sanctions, said the U.S. steps taken so far have not succeeded either "in hastening the demise of racism in South Africa [or] punishing the South African government."

An effort is expected on Capitol Hill to pass legislation adopting more stringent sanctions against South Africa, though it is unclear whether action will be taken before next year. (1986 Almanac p. 359)

#### ✓ Reagan Urged to Reconsider Saudi Arms Sale

Strong majorities of the House and Senate have asked President Reagan to reconsider his plans for a major arms sale to Saudi Arabia.

The administration had been ready to notify Congress the week of Sept. 28 about a \$1 billion-plus sale, to include F-15 warplanes, anti-tank missiles and upgraded equipment for older weapons already owned by the Saudis. But in the days before that notification was to have been made, Reagan got two letters asking him to reconsider. One was signed by 64 senators and the other by 225 House members.

Apparently because of the opposition — which had been expected — the administration delayed the sale notice for at least a week. Administration officials reportedly have considered withdrawing the most controversial part of the arms sale package — 1,600 Maverick air-launched anti-tank missiles.

By law, Congress can block foreign arms sales by passing — over the president's likely veto — a joint resolution of disapproval. The current arms sale to Saudi Arabia is the second controversial one this year. Faced with strong congressional opposition, Reagan on June 11 withdrew his first proposal to sell the Saudis the 1,600 Maverick anti-tank missiles. (p. 1254)

#### ✓ Senate Opens Debate on State Department Bill

The Senate Oct. 2 began debate on a two-year reauthorization of the State Department and related agencies (S 1394 — S Rept 100-75). The measure authorizes \$3.6 billion for fiscal 1988, a \$600 million cut below President Reagan's request for that year.

The bill has been the vehicle for concern about the bugging of a new U.S. Embassy building in Moscow, still under construction, and the potential for espionage at a new Soviet building in Washington, D.C.

The House on June 23 approved its own version (HR 1777) authorizing \$3.9 billion in fiscal 1988 funds. (pp. 1385, 1387)

### Government Operations

#### ✓ House Committee OKs Procurement Overhaul

The House Government Operations Committee Sept. 29 approved a bill (HR 3345) revamping several aspects of the federal procurement system as part of a four-year reauthoriza-

tion of the Office of Federal Procurement Policy (OFPP).

The bill creates a new body, the Federal Acquisition Regulatory Council, to oversee the federal procurement system. The council would consist of officials from the OFPP, the Defense Department, the General Services Administration and the National Aeronautics and Space Administration. "Under this structure, OFPP would be an equal player with DOD [Department of Defense] and the civilian agencies in the regulatory process," said Chairman Jack Brooks of Texas.

The bill gives OFPP overall management authority over federal procurement when the regulatory council is unable to agree on or fails to issue governmentwide procurement policies.

The bill also tightens ethics regulations for officials and contractors involved in procurement. Sanctions would be imposed against contractors who offer jobs or items of value to government officials involved in procurement. Also, federal officials would be prohibited from taking jobs involving federal contract work for five years after leaving government service.

The bill authorizes \$4.5 million per year for OFPP for the next four years.

### Health/Human Services

#### ✓ House GOP Urges Separate Welfare Debate

House Republicans, mindful of Democratic threats to make welfare-overhaul legislation part of the upcoming budget-reconciliation bill, are urging House Speaker Jim Wright, D-Texas, to keep it separate.

In a Sept. 20 letter to the Speaker, Minority Leader Robert H. Michel, Ill., along with members of the Republican Welfare Reform Task Force, said, "Welfare reform is too important to include in any legislative package. . . . The American public, particularly the poor and disadvantaged, deserve a full congressional debate of the issue."

Michel and his colleagues are hoping to get a chance to offer compromise legislation (HR 3200) introduced in August as a substitute for HR 1720, the Democratic-backed initiative that has been approved by the Ways and Means, Education and Labor, and Energy and Commerce committees. Leading supporters of HR 1720 have hinted broadly over the past several weeks that they would like to see their bill included in the reconciliation package, both as a way to speed its passage and as a possible way to avoid a presidential veto. (p. 1811)

#### ✓ Developmental Disabilities Bill Passed

The Senate Sept. 30 approved a compromise version of legislation to reauthorize for three years a federal program that seeks to extend services to and expand the rights of mentally retarded and severely handicapped individuals.

By voice vote, the chamber approved a joint House-Senate statement (in lieu of an official conference report) on S 1417, which it passed July 21. The Senate bill was a virtual rewrite of the so-called Developmental Disabilities program, while the House version, HR 1871, was essentially a straight reauthorization. The House passed HR 1871 Aug. 4, and is expected to clear the revised bill the week of Oct. 5.

The compromise bill, which is essentially the Senate version, seeks to strengthen the role of state planning councils for the developmentally disabled and to emphasize the role of families in helping the disabled reach their full potential. (p. 1813)

ROUTING AND TRANSMITTAL SLIP

10/14/87

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REMARKS

Bill:

S-328 Passed Senate (Prompt Payments Act) Finance has followed although info copy sent last month to D/O

Note 2 Amendments

946 - "Prime Contract"

948 "

~~Please comment soonest. House will act in short order.~~

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Friday, October 9, 1987

# Daily Digest

## HIGHLIGHTS

Senate Passed Prompt Payment Act Amendments.

## Senate

### Chamber Action

*Routine Proceedings, pages S13937-S14082*

**Measures Introduced:** Six bills and two resolutions were introduced, as follows: S. 1779-1784, and S.J. Res. 198-199.

Page S14063

**Measures Reported:** Reports were made as follows:

H.R. 2890, making appropriations for the Department of Transportation and related agencies for the fiscal year ending September 30, 1987, and September 30, 1988, and for other purposes with amendments. (S. Rept. No. 100-198)

Special Reports entitled "Finance Committee Allocation of Budget Totals—Fiscal Year 1988." (S. Rept. No. 100-199)

Page S14062

Page S13980

### Measures Passed:

**Prompt Payment Act Amendments:** By unanimous vote of 86 yeas (Vote No. 318), Senate passed S. 328, to require the Federal Government to pay interest on overdue payments, after agreeing to a committee amendment in the nature of a substitute and taking action on amendments proposed thereto, as follows:

Pages S13948, S13978

Adopted:

(1) Dixon Amendment No. 945, to provide for the prompt payment of contractors for dairy and other products and periodic payments under supply and service contracts.

Page S13958

(2) Levin-Quayle Amendment No. 946, to permit a prime contractor and a subcontractor to agree not to include in a subcontract a payment clause which would otherwise be required to be included in such subcontract.

Page S13961

(3) Danforth Amendment No. 947, to provide for interest payments on certain agricultural payments if prompt payment is not made.

Page S13965

(4) Grassley Amendment No. 948, to establish a Presidential Advisory Panel for Coordination of Government Debt Collection and Delinquency Prevention Activities, which shall (1) review and evaluate Federal policies on debt collection and delinquency prevention, (2) recommend uniform policies, procedures, and guidelines for the collection of debts owed to the United States Government, (3) develop the priority and manner of delinquent debt collection and procedures for the prevention of delinquencies, (4) establish training manuals to increase the effectiveness of employees involved in collection activities, and (5) undertake additional related tasks and make interim reports of its activities and recommendations as the President or Congress may determine necessary.

(5) Sasser Amendment No. 949, to make technical corrections and to codify a general provision of the Supplemental Appropriations Act, 1984 (Public Law 98-181; 97 Stat. 1297).

Page S13982

**War Powers Act Compliance:** Senate began consideration of S.J. Res. 194, to require compliance with the provisions of the War Powers Resolution, as modified, with amendments proposed thereto, as follows:

Pages S13941, S13971, S14000, S14018

Pending:

(1) Warner-Byrd Amendment No. 951, in the nature of a substitute.

Page S14018

(2) Byrd-Warner Amendment No. 952 (to Amendment No. 951), of a perfecting nature.

Page S14019

By 37 yeas to 52 nays (Vote No. 317), Senate failed to table the joint resolution.

Page S13978

**Veteran Beneficiary Travel Payments—Agreement:** A unanimous-consent agreement was reached providing for the consideration of S. 1464, to pro-

## CONGRESSIONAL RECORD

Office No.		Office No.	
McMillan, J. Aler (N.C.).....	401	Sabo, Martin Olav (Minn.).....	2201
McMillen, C. Thomas (Md.).....	1508	Saiki, Patricia F. (Hawaii).....	1407
Mack, Connie (Fla.).....	228	St Germain, Fernand J. (R.I.).....	2108
MacKay, Buddy (Fla.).....	330	Savage, Gus (Ill.).....	1121
Madigan, Edward R. (Ill.).....	2312	Sawyer, Tom C. (Ohio).....	1338
Manton, Thomas J. (N.Y.).....	327	Saxton, Jim (N.J.).....	324
Markey, Edward J. (Mass.).....	2133	Schaefer, Dan (Colo.).....	1317
Marienee, Ron (Mont.).....	2465	Scheuer, James H. (N.Y.).....	2466
Martin, David O B. (N.Y.).....	442	Schneider, Claudine (R.I.).....	1512
Martin, Lynn (Ill.).....	1208	Schroeder, Patricia (Colo.).....	2410
Martinez, Matthew G. (Calif.).....	109	Schuette, Bill (Mich.).....	415
Matsui, Robert T. (Calif.).....	2419	Schulze, Richard T. (Pa.).....	2369
Mavroules, Nicholas (Mass.).....	2432	Schumer, Charles E. (N.Y.).....	126
Mazzoli, Romano L. (Ky.).....	2246	Sensenbrenner, F. James, Jr. (Wis.).....	2444
Meyers, Jan (Kans.).....	315	Sharp, Philip R. (Ind.).....	2452
Mfume, Kweisi (Md.).....	1107	Shaw, E. Clay, Jr. (Fla.).....	440
Mica, Dan (Fla.).....	2455	Shays, Christopher (Conn.).....	1630
Michel, Robert H. (Ill.).....	2112	Shumway, Norman D. (Calif.).....	1203
Miller, Clarence E. (Ohio).....	2208	Shuster, Bud (Pa.).....	2268
Miller, George (Calif.).....	2228	Sikorski, Gerry (Minn.).....	414
Miller, John (Wash.).....	1224	Sisisky, Norman (Va.).....	426
Mineta, Norman Y. (Calif.).....	2350	Skaggs, David E. (Colo.).....	1723
Moakley, Joe (Mass.).....	221	Skeen, Joe (N. Mex.).....	1007
Molinari, Guy V. (N.Y.).....	208	Skelton, Ike (Mo.).....	2453
Mollohan, Alan B. (W. Va.).....	516	Slattery, Jim (Kans.).....	1440
Montgomery, G.V. (Sonny) (Miss.).....	2184	Slaughter, D. French, Jr. (Va.).....	319
Moody, Jim (Wis.).....	1721	Slaughter, Louise MacIntosh (N.Y.).....	1313
Moorhead, Carlos J. (Calif.).....	2346	Smith, Christopher H. (N.J.).....	422
Morella, Constance A. (Md.).....	1024	Smith, Denny (Oreg.).....	1213
Morrison, Bruce A. (Conn.).....	437	Smith, Lamar S. (Tex.).....	509
Morrison, Sid (Wash.).....	1434	Smith, Lawrence J. (Fla.).....	113
Mrazek, Robert J. (N.Y.).....	306	Smith, Neal (Iowa).....	2373
Murphy, Austin J. (Pa.).....	2210	Smith, Robert C. (N.H.).....	115
Murtha, John P. (Pa.).....	2423	Smith, Robert F. (Bob) (Oreg.).....	118
Myers, John T. (Ind.).....	2372	Smith, Virginia (Nebr.).....	2202
Nagle, David R. (Iowa).....	214	Snowe, Olympia J. (Maine).....	2464
Natcher, William H. (Ky.).....	2333	Solarz, Stephen J. (N.Y.).....	1536
Neal, Stephen L. (N.C.).....	2463	Solomon, Gerald B.H. (N.Y.).....	2342
Nelson, Bill (Fla.).....	2404	Spence, Floyd (S.C.).....	2113
Nichols, Bill (Ala.).....	2405	Spratt, John M., Jr. (S.C.).....	1118
Nielson, Howard C. (Utah).....	1229	Staggers, Harley O., Jr. (W. Va.).....	1504
Nowak, Henry J. (N.Y.).....	2240	Stallings, Richard H. (Idaho).....	1221
Oakar, Mary Rose (Ohio).....	2231	Stangeland, Arlan (Minn.).....	2245
Oberstar, James L. (Minn.).....	2351	Stark, Fortney H. (Pete) (Calif.).....	1125
Obey, David R. (Wis.).....	2217	Stenholm, Charles W. (Tex.).....	1226
Olin, Jim (Va.).....	1238	Stokes, Louis (Ohio).....	2464
Ortiz, Solomon P. (Tex.).....	1524	Stratton, Samuel S. (N.Y.).....	2205
Owens, Major R. (N.Y.).....	114	Studds, Gerry E. (Mass.).....	237
Owens, Wayne (Utah).....	1728	Stump, Bob (Ariz.).....	211
Ozley, Michael G. (Ohio).....	1131	Sundquist, Don (Tenn.).....	230
Packard, Ron (Calif.).....	316	Sunia, Fofa I.F. <sup>a</sup> (American Samoa).....	1206
Panetta, Leon E. (Calif.).....	339	Sweeney, Mac (Tex.).....	1713
Parris, Stan (Va.).....	1526	Swift, Al (Wash.).....	1502
Pashayan, Charles, Jr. (Calif.).....	129	Swindall, Patrick L. (Ga.).....	331
Patterson, Elizabeth J. (S.C.).....	1022	Synar, Mike (Okla.).....	2441
Pease, Donald J. (Ohio).....	1127	Tallon, Robin (S.C.).....	432
Pelosi, Nancy (Calif.).....	1632	Tauke, Thomas J. (Iowa).....	2244
Penny, Timothy J. (Minn.).....	436	Tauzin, W.J. (Billy) (La.).....	222
Pepper, Claude (Fla.).....	2239	Taylor, Gene (Mo.).....	2134
Perkins, Carl C. (Ky.).....	1004	Thomas, Robert Lindsay (Ga.).....	431
Petri, Thomas E. (Wis.).....	2443	Thomas, William M. (Calif.).....	2402
Pickett, Owen B. (Va.).....	1429	Torres, Esteban Edward (Calif.).....	1740
Pickle, J.J. (Tex.).....	242	Taricelli, Robert G. (N.J.).....	317
Porter, John Edward (Ill.).....	1501	Towns, Edolphus (N.Y.).....	1726
Price, David E. (N.C.).....	1223	Trafficant, James A., Jr. (Ohio).....	128
Price, Melvin (Ill.).....	2110	Traxler, Bob (Mich.).....	2366
Pursell, Carl D. (Mich.).....	1414	Udall, Morris K. (Ariz.).....	235
Quillen, James H. (Jimmy) (Tenn.).....	102	Upton, Frederick S. (Mich.).....	1607
Rahall, Nick Joe, II (W. Va.).....	343	Valentine, Tim (N.C.).....	1510
Rangel, Charles B. (N.Y.).....	2330	Vander Jagt, Guy (Mich.).....	2409
Ravenel, Arthur, Jr. (S.C.).....	1730	Vento, Bruce F. (Minn.).....	2304
Ray, Richard (Ga.).....	425	Visclosky, Peter J. (Ind.).....	420
Regula, Ralph (Ohio).....	2209	Volkmer, Harold L. (Mo.).....	2411
Rhodes, John J., III (Ariz.).....	510	Vucanovich, Barbara F. (Nev.).....	312
Richardson, Bill (N. Mex.).....	332	Walgren, Doug (Pa.).....	2241
Ridge, Thomas J. (Pa.).....	1714	Walker, Robert S. (Pa.).....	2445
Rinaldo, Matthew J. (N.J.).....	2469	Watkins, Wes (Okla.).....	2348
Ritter, Don (Pa.).....	2447	Waxman, Henry A. (Calif.).....	2418
Roberts, Pat (Kans.).....	1314	Weber, Vin (Minn.).....	106
Robinson, Tommy F. (Ark.).....	1541	Weiss, Ted (N.Y.).....	2442
Rodino, Peter W., Jr. (N.J.).....	2462	Weldon, Curt (Pa.).....	1233
Roe, Robert A. (N.J.).....	2243	Wheat, Alan (Mo.).....	1204
Roemer, Buddy (La.).....	103	Whittaker, Bob (Kans.).....	2436
Rogers, Harold (Ky.).....	206	Whitten, Jamie L. (Miss.).....	2314
Rose, Charles (N.C.).....	2230	Williams, Pat (Mont.).....	2457
Rostenkowski, Dan (Ill.).....	2111	Wilson, Charles (Tex.).....	2265
Roth, Toby (Wis.).....	2352		
Roukema, Marge (N.J.).....	303		
Rowland, J. Roy (Ga.).....	423		
Rowland, John G. (Conn.).....	512		
Roybal, Edward R. (Calif.).....	2211		
Russo, Marty (Ill.).....	2233		
Wise, Robert E., Jr. (W. Va.).....	1421		
Wolf, Frank R. (Va.).....	130		
Wolpe, Howard (Mich.).....	1535		
Wortley, George C. (N.Y.).....	229		
Wright, Jim (Tex.).....	1236		
Wyden, Ron (Oreg.).....	1406		
Wyllie, Chalmers P. (Ohio).....	2310		
Yates, Sidney R. (Ill.).....	2234		
Yatron, Gus (Pa.).....	2267		
Young, C.W. Bill (Fla.).....	2407		
Young, Don (Alaska).....	2331		

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<sup>a</sup> Delegate from American Samoa.



October 9, 1987

## CONGRESSIONAL RECORD — SENATE

S 13947

law and see whether we are selectively complying with the War Powers Act.

Mr. President, the War Powers Act says, in section 4(a), to which the Senator from Connecticut's resolution refers, the introduction of Armed Forces "into hostilities or situations where imminent involvement in hostilities is clearly indicated by the circumstances."

Now, you can argue whether you have hostilities or do not have hostilities or whether this is predicated upon going into a conventional type war, which I do not believe it is. I think what we have is terrorism.

I think this Act was written to prevent the United States from marching down the road to an undeclared war. I think this legislation was written so we could not go in on the side of a combatant nation like South Vietnam without the consent and without the invocation of the War Powers Resolution with the Congress.

That is not the case in the Persian Gulf. The Persian Gulf operation is one of stability and making sure that we have the navigation of the waters. We are not siding with a combatant nation. We are siding with Kuwait.

This legislation says that, within 60 days, the President, in fact, should report to the Congress. Let me just read section 5(b). "Within 60 days after a report is submitted or"—and these are the operative words, to get down to what this law says—"is required to be submitted pursuant to section 4(a)(1), whichever is earlier."

Mr. President, we have been debating the invocation of the War Powers Act for months now. Those that are the proponents of the War Powers Act say that imminent hostilities in the War Powers Act apply. I can tell you that over 60 days, over 60 days, according to their pronouncement, have, in fact, expired.

Then it goes on to say that any time, in fact a resolution is not passed; if a resolution is not passed, then in fact, the deployment of that operation must cease and terminate.

It does not say whether the Congress in fact determines that there have been hostilities. The law merely says that when there have been, the President is required to submit a report.

Those that argue that we ought to have the War Powers Act certainly believe that the President should have been required to send a report up here more than 60 days ago. Therefore, the law itself says that we ought to terminate—ought to terminate our actions in the Persian Gulf.

So, what we should be voting on, and what the vote ought to be, if you want to read, strictly the War Powers Act, is whether they should be coming home or not.

I have heard the Senator from Connecticut and other Senators say: Well, this is not an amendment to bring them home. This is not an amendment to bug out of the Persian Gulf.

If you read the War Powers Act and it says that where the President should have submitted a report because of imminent hostilities, a literal reading of that means that they ought to come home.

I do not endorse that, but that is what is in this law that is, in fact, unconstitutional; that is unworkable; and I think there is a question of whether it should be applied here because I do not believe that we were taking into account terrorist types of activities.

Mr. President, this is not unusual for the Congress, trying to get into every foreign policy operation. It is not unusual for the Congress to try to have it both ways. Because from a clear statement of what is in the War Powers Act, the amendment that ought to be before us is to say: OK, let us come home.

I have been absolutely amazed at this debate that has gone on for several weeks and several months here because for some reason the Congress and many of the Senators and Congressmen will stand up and say: Well, Congress has got to be involved. You know, the President is going outside his scope of responsibility; that the Congress has got to be involved in this. There has been consultation and there will be more consultation. There will be consultation on this issue and this incident. But the Congress has to be involved.

Well, the Congress can clearly become involved whenever it wants to. I am amazed at the lack of respect for the authority that the Founding Fathers gave the Congress of the United States. Because the Founding Fathers gave the Congress of the United States the power of the purse and anytime somebody wants to stop what is going on over there, instead of this in between, indecisive, ambiguous, and I think harmful, ambiguous law, you vote on any foreign operation straight up or down.

Congress can do that. Congress is a powerful institution. Congress is on equal footing with the executive branch.

I do not think that Congress ought to be intimidated by the executive branch if they do not like what the executive branch is doing. Be straightforward about it. Be straightforward about it and what this law says. Because if you believe the technical definition of imminent hostilities happened more than 60 days ago, then there is a violation according to the law and the President has to cease operations over there. That is what the War Powers Resolution requires, which everybody says is such a great piece of legislation.

So, I really believe that this Congress can, in fact, do whatever it wants to do as far as the power of the purse.

Now the question is whether they will do it. I seriously doubt it. I have heard a number of statements by distinguished Senators who support the War Powers Resolution but say that

they will vote for the policy. But in think that this policy or this moving or bringing up the War Powers Resolution—and I know it was scheduled to come up before this latest incident—but having it come up on every incident sends a message of vacillation, a message of uncertainty; a message that we are gripped with paralysis and indecision.

Unfortunately, I think that this Congress is indecisive; 535—it is very difficult, sometimes, to get a consensus. That is why we have a commander in chief. That is why we have one President who can, in fact, deploy forces. If the Congress does not like it, the Founding Fathers gave them the power to stop that, and that power ought to be exhibited if they feel that way.

But, no, we always sort of want to have it both ways. We do not have a straight up or down vote of what the War Powers Act says. The War Powers Act basically said, and these people said he should have invoked it, it says if he should have invoked it and if he is there over 60 days and the Congress has not acted in the affirmative that they have to come home.

That is the reading. That is the literal reading of the War Powers Act.

We do not want to get down to reading, really, what is in this thing because when you start to read what is in this thing it scares people. People know that this is simply an unworkable piece of legislation and we are not talking about a UDAG grant; we are not talking about farm credit—very important to our domestic situation. We are talking about foreign policy and we are talking about American lives. In fact, I believe the chances for greater instability increase when we do these kinds of things. That is my judgment and it is a judgment of a lot of others, that when we get into this kind of action and bringing these things up, we have to keep bringing them up every little time there is a hostility—I mean, hostilities happen all the time. You walk down the streets, you have hostile acts or potential hostile acts.

If we had to take the literal interpretation of this, we would not be doing anything but passing War Powers Resolutions all the time. This is a risky, hostile world. There are a lot of potential risks out there and, thank God, we have got the Armed Forces and the courageous men and women that volunteer to serve this country; we have got the cooperation of our allies—West Germany joined today. We have a policy that is moving forward, a policy that has, in fact, I think, been successful and will continue to be successful.

But this type of micromanagement, of messing around in foreign policy, is counterproductive to peace. It is counterproductive to having stability. It is counterproductive to seeing the na-

S 13948

## CONGRESSIONAL RECORD — SENATE

October 9, 1987

tional security interests of this country enhanced.

I wish that we would cease this conversation. It is going to keep coming up. It has come up in the past and I presume it will come up. But if you want to look at the reading of this resolution, if you want to read the wording of this resolution, Mr. President, the literal reading of this resolution means they ought to come home now. I do not believe there are too many that advocate that, but they certainly could. Congress has that power.

The PRESIDING OFFICER. The Senator's time has expired.

### PROMPT PAYMENT ACT AMENDMENTS

The PRESIDING OFFICER. Under the previous order, the Senate will now proceed to consideration of Calendar No. 132, S. 328. The clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 328) to amend chapter 39 of title 31, United States Code, to require the Federal Government to pay interest on overdue payments, and for other purposes.

The Senate proceeded to consider the bill which had been reported from the Committee on Governmental Affairs, with an amendment to strike all after the enacting clause and insert in lieu thereof, the following:

#### SHORT TITLE

SECTION 1. This Act may be cited as the "Prompt Payment Act Amendments of 1987".

#### CONGRESSIONAL FINDINGS

Sec. 2. The Congress finds that—

(1) the billpaying practices of most Federal Government agencies generally have improved, with certain exceptions, after four years of experience under the Prompt Payment Act (codified in chapter 39 of title 31, United States Code);

(2) the improvement in such billpaying practices has resulted in fairer treatment of contractors who furnish supplies, services, or construction to the Federal Government, especially small businesses;

(3) nonetheless, many contractors who deal with the Federal Government continue to experience persistent problems of untimely Government payments as a result of—

(A) the failure to implement the provisions of the Prompt Payment Act through the Government-wide Federal Acquisition Regulation;

(B) the implementation of the provisions of the Prompt Payment Act in a manner that denies the Act's protections in cases of certain contract payments, such as progress payments for work satisfactorily performed under construction contracts and payment of amounts which have been retained by a Federal Government agency during the performance of construction contracts and are to be released upon final acceptance of the construction work by the agency;

(C) the unlimited time presently afforded Federal Government agencies formally to accept supplies delivered or services performed by contractors, which may be improperly used by such agencies to deny late payment interest penalties to contractors delivering such supplies or performing such services in a timely manner as prescribed by the contract;

(D) the implementation of the provisions of such Act in a manner which has permitted Federal Government agencies to take discounts for early payment months after the expiration of the discount period specified in the contractor's invoice;

(E) the failure of the Act explicitly to require Federal Government agencies automatically to pay late payment interest penalties due to contractors;

(F) the absence of incentives effectively to dissuade Government employees from attempting to withhold late payment interest penalties which contractors are entitled to receive;

(G) the continued availability of certain payment grace periods which affords Federal Government agencies the opportunity to pay their bills late without incurring any late payment interest penalty and, thus, unilaterally to extend the payment due date upon which the contractors have based their contract prices;

(H) the failure of Federal Government agencies to implement the requirement in the Act to pay, during the contract period, for the periodic delivery of supplies or the periodic performance of services if permitted by the contract; and

(I) the failure of the Act explicitly to protect contractors doing business with the United States Postal Service;

(J) the Federal Government will realize substantial benefits if Government construction contracts require Government contractors to pay their subcontractors and suppliers in a timely manner, in accordance with prevailing industry standards, or be subject to the same late payment interest penalties prescribed in the Act; and

(K) a strengthening of the provisions of the Prompt Payment Act, and its vigorous enforcement, is a key recommendation made to the President and the Congress by the delegates to the 1986 White House Conference on Small Business.

#### DEFINITIONS AND APPLICATION

SEC. 3. (a) Section 3901(a)(4) of title 31, United States Code, is amended to read as follows:

"(4) the head of the agency is deemed to receive an invoice on the later of—

"(A) the date on which the place or person designated by the agency to first receive such invoice actually receives a proper invoice; or

"(B) on the fifth day after the date on which, in accordance with the terms and conditions of the contract, the property is actually delivered or final performance of the services is actually completed, as the case may be, unless—

"(i) the agency has actually accepted such property or services before such fifth day; or

"(ii) the contract specifies a longer period for agency acceptance of the property or services."

(b)(1) Section 3901 of such title is further amended by adding at the end the following new subsection (c):

"(c) This chapter, except section 3906 of this title, applies to the United States Postal Service. However, the Postmaster General shall be responsible for issuing the implementing procurement regulations, solicitation provisions, and contract clauses for the United States Postal Service."

(2) Section 410(b) of title 39, United States Code, is amended by inserting after clause (8) the following new clause (9):

"(9) Chapter 39 of title 31."

#### INTEREST PENALTIES: REDUCTIONS IN GRACE PERIOD; INCREASED PENALTIES; OBLIGATION TO PAY PENALTIES

SEC. 4. (a)(1)(A) Section 3902(b) of title 31, United States Code, is amended by striking out "16th" in clause (3) in such sentence and inserting in lieu thereof "8th".

(B) Effective with respect to payments made on or after October 1, 1989, section 3902(b) of title 31, United States Code, is amended by striking out the second sentence.

(b) Section 3902 of such title is further amended by redesignating subsections (c) through (e) as subsections (e) through (g), respectively, and by inserting after subsection (b) the following new subsections (c) and (d):

"(c)(1) Any amount of an interest penalty of \$1.00 or more which is owed a business concern under this section shall be paid without regard to whether the business concern has requested payment of such penalty.

"(2) If a business concern—

"(A) is owed an interest penalty by an agency;

"(B) is not paid the interest penalty in a payment made to the business concern by the agency on or after the date on which the interest penalty becomes due;

"(C) is not paid the interest penalty by the agency within 10 days after the date on which such payment is made; and

"(D) makes a written demand, not later than 40 days after the date on which such payment is made, that the agency pay such a penalty,

such business concern shall be entitled to receive an interest penalty equal to twice the amount of the interest payment that would otherwise be due.

"(d) The unavailability of funds to make a timely payment due for property or services does not relieve the head of an agency from the obligation to pay interest penalties under this section."

#### INTEREST PENALTIES ON PROGRESS PAYMENTS AND RETAINED AMOUNTS UNDER CONSTRUCTION CONTRACTS

SEC. 5. Section 3903 of title 31, United States Code, is amended—

(1) by striking out clause (4);

(2) by redesignating clause (5) as (6); and

(3) by inserting after clause (3) the following new clause (4):

"(4) in the case of a construction contract, provide for the payment of interest on—

"(A) any progress payment due under the contract for—

"(i) a period of more than 7 days; or

"(ii) a longer period if the contracting officer determines that the prevailing practice in private construction contracts is to provide such longer payment period; and

"(B) any amount which has been retained during the performance of the contract and are due to be released to the contractor after final acceptance of the construction, if such retained amount is not paid to the contractor by the required payment date;"

#### PERIODIC PAYMENTS UNDER SUPPLY AND SERVICE CONTRACTS

SEC. 6. Section 3903 of title 31, United States Code, as amended by section 5, is further amended by inserting after clause (4) the following:

"(5) provide for periodic payments, in the case of a supply or service contract which authorizes periodic payments during the contract period, upon—

"(A) submission of an invoice for supplies delivered or services performed during the contract period, if an invoice is required by the contract; and

"(B) either—

"(i) acceptance of the supplies or services by an employee of an agency authorized to accept the supplies or services; or

"(ii) certification, by such an employee, that the performance covered by the payment conforms to the terms and conditions of the contract."

October 9, 1987

## CONGRESSIONAL RECORD — SENATE

S 13949

## PAYMENT CLAUSE FOR SUBCONTRACTS UNDER CONSTRUCTION CONTRACTS

SEC. 7. (a) Chapter 39 of title 31, United States Code, is amended—

(1) by redesignating sections 3905 and 3906 as 3906 and 3907, respectively; and  
(2) by inserting after section 3904 the following:

"§3905. Payment clause for subcontracts under construction contracts

"(a) Each construction contract awarded by an agency shall include a clause that requires the prime contractor to include, in each subcontract for property or services entered into by the prime contractor and a subcontractor (including a material supplier) for the purpose of performing such construction contract, a payment clause which obligates the prime contractor—

"(1) to pay the subcontractor promptly (as determined in accordance with the prevailing industry standard) out of such amounts as are paid to the prime contractor by the agency for work satisfactorily performed by the subcontractor under that contract; and

"(2) to pay to the subcontractor an interest penalty on amounts due in the case of each payment not made in accordance with such payment clause—

"(A) for the period beginning on the day after the required payment date and ending on the date on which payment of the amount due is made; and

"(B) computed at the most current rate of interest that has been determined by the Secretary of the Treasury for interest payments under section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611) and published by the Secretary in the Federal Register.

"(b) In addition to the payment clause required by subsection (a), a prime contractor may negotiate and include in the subcontract a provision which permits the prime contractor to make a determination, before making application to the agency for a payment for work performed by a subcontractor, that—

"(1) all or part of the subcontractor's request for payment may be withheld for good cause; and

"(2) a specified percentage of any progress payment otherwise due to the subcontractor may be retained for the protection of the prime contractor and be paid to the subcontractor within seven days after such amount is released to the prime contractor by the Government.

"(c) A prime contractor may not request payment from the agency of any amount withheld or retained in accordance with subsection (b) until such time as the prime contractor has determined and certified to the agency that the subcontractor is entitled to the payment of such amount.

"(d) A dispute between a prime contractor and a subcontractor relating to the amount or entitlement of a subcontractor to a payment or a late payment interest penalty under a subcontract clause conforming to the standards of subsection (a) does not constitute a dispute to which the United States is a party. The United States may not be interpleaded in any judicial or administrative proceeding involving such a dispute.

"(e) Except as provided in subsection (d), this section shall not limit or impair any contractual, administrative, or judicial remedies otherwise available to a subcontractor or a contractor in the event of a dispute involving late payment or nonpayment by a prime contractor.

"(f) A prime contractor's obligation to pay an interest penalty to a subcontractor pursuant to the payment clause included in a subcontract under subsection (a) may not be construed to be an obligation of the United States. A contractor may not obtain reim-

bursement from the United States for such interest penalty. A contract modification may not be made for the purpose of providing reimbursement of such interest penalty. A cost reimbursement claim may not include any amount for reimbursement of such interest penalty."

(b) The table of sections at the beginning of such chapter is amended by striking out the items relating to sections 3905 and 3906 and inserting in lieu thereof the following:

"3905. Payment clause for subcontracts under construction contracts.

"3906. Reports.

"3907. Relationship to other laws."

## LIMITATIONS ON DISCOUNT PAYMENTS

SEC. 8. Section 3904 of title 31, United States Code, is amended by inserting after the first sentence the following: "For the purpose of the preceding sentence, the specified time shall be calculated from the date the invoice under the contract is received by the office or employee of the agency designated by the agency to first receive such invoice until the date of payment."

## REPORTS

SEC. 9. Section 3906(a) of title 31, United States Code (as redesignated by section 7(a)(1)), is amended to read as follows:

"(a)(1) By the 60th day after the end of the fiscal year, the head of each agency shall submit to the Director of the Office of Management and Budget a report on the agency's payment practices during that fiscal year, including a description of the extent to which those practices satisfy the requirements of this chapter.

"(2) In addition to such other information as may be required by the Director, the report required by paragraph (1) shall include—

"(A) the number, dollar value, and percentage of invoices for which interest or other late payment penalties were paid, the amount of such late payment interest and other penalties, and the reasons the interest penalties were not avoided by prompt payment; and

"(B) the number, dollar value, and percentage of invoices paid after the required payment date without payment of an interest penalty or other late payment penalty, and the reasons no obligation to pay such penalties was incurred with respect to such invoices or no amount for such penalties were included in the payments of such invoices."

## IMPLEMENTATION THROUGH THE FEDERAL ACQUISITION REGULATION

SEC. 10. (a) The Federal Acquisition Regulation shall be modified to provide appropriate solicitation provisions and contract clauses that implement chapter 39 of title 31, United States Code, and the regulations prescribed under section 3903 of such title.

(b) The solicitation provisions and contract clauses required by subsection (a) shall include the following matters:

(1) Authority for a contracting officer to specify for a contract or class of contracts a specific payment period, which—

(A) in the case of payments for commercial items or services, is similar to the payment period of periods permitted in prevailing private industry contracting practices;

(B) in the case of payments for noncommercial items and services, does not exceed 30 days unless the circumstances of the procurement action require a longer period for payment; and

(C) in the case of progress payments under construction contracts, does not exceed 7 days, unless the contracting officer determines that the prevailing practice in private construction contracts requires a longer payment period.

(2) Requirements to make periodic payments, in the case of a supply or service contract which authorizes periodic payments during the contract period, upon—

(A) submission of an invoice for supplies delivered or services performed during the contract period, if an invoice is required by the contract; and

(B) either—

(i) acceptance of the supplies or services by an employee of the contracting agency authorized to accept the supplies or services; or

(ii) certification, by such an employee, that the performance covered by the payment conforms to the terms and conditions of the contract.

(3) A conclusive presumption, for the purposes of determining timely payment, that the Federal Government has accepted property or services by the fifth day after the date on which, in accordance with the terms and conditions of the contract, the property is delivered or final performance of the services is completed, unless the circumstances of the procurement require a longer period for acceptance by the Federal Government and such longer period is specified in the solicitation for such contract.

(4) The limitation that the Federal Government may take a discount offered by a contractor for early payment by the Federal Government only in accordance with the time limits specified by the contractor.

(5) The requirements of section 3902(c) of title 31, United States Code.

(c) The regulations required by subsection (a) shall be published as proposed regulations for public comment as provided in section 22 of the Office of Federal Procurement Policy Act (41 U.S.C. 420) within 120 days after the date of the enactment of this Act.

## EFFECTIVE DATES

SEC. 11. (a) Section 3(a)(2) and the amendments made by sections 3(a)(1), 4, 5, 6, 7, and 8 shall apply to payments under contracts awarded, contracts renewed, and contract options exercised during or after the first fiscal quarter which begins more than 90 days after the date of the enactment of this Act.

(b) The amendments made by section 3(b) shall apply to payments under contracts awarded on or after October 1, 1988.

(c) The amendment made by section 9 shall apply to the report required by section 3906 of title 31, United States Code, for each fiscal year beginning after September 30, 1987.

The amendment was agreed to.

The bill was ordered to be engrossed for a third reading, read the third time, and passed.

Mr. BYRD. Mr. President, I suggest the absence of a quorum. I suggest the time be equally charged.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. SASSER. Mr. President, earlier this year I introduced S. 328, the Prompt Payment Act Amendments of 1987. At the time of introduction, the bill had some 56 original cosponsors. Since that time, the number of cosponsors has grown to 85. This, I have

S 13950

## CONGRESSIONAL RECORD — SENATE

October 9, 1987

little doubt that this measure will be approved by an overwhelming majority in the Senate.

This broad base of support for S. 328 is not confined to this Chamber. An ever-growing list of business organizations supports this measure. At last count, more than 40 business organizations had registered their support for this bill. Mr. President, I ask unanimous consent that a list of the organizations supporting S. 328 be included in the RECORD at the conclusion of my opening remarks. I further ask consent that letters of support for this legislation from a variety of business groups appear in the RECORD at that point.

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

(See exhibit 1.)

Mr. SASSER. The support for this legislation is strong evidence of the desire to fulfill the promise inherent in the Prompt Payment Act—getting the Government to pay its bills on time. My colleagues will recall that we first focused attention on this issue in the 97th Congress. I introduced the first prompt payment bill in the Senate that session. The legislation which eventually became law was introduced at a later date by our colleagues, Senators DANFORTH and CHILES.

To refresh my colleagues' memory, the intent behind the Prompt Payment Act is simply enough. The Federal Government is the single largest purchaser of goods and services in this country. Yet, the Federal Government has a history of being notoriously slow in paying its bills. Such late bill paying increases costs to business.

At a time of high interest rates, it can increase the cost of doing business very, very substantially. Indeed, Mr. President, my attention was first attracted to this problem by complaints from small business people doing business with the Federal Government in and around Oak Ridge, TN. These small business owners indicated that they simply did not want any more Government business back in the days of very high interest rates because they could not afford to carry the Government for 45 to 60 to 90 days when interest rates were running 15, 16, and 17 percent. So that gives you some idea about how late bill paying can increase the cost of doing business to the point that some businesses simply do not want to do business with the Government.

These higher costs on Government contracts have two direct results. One, we see fewer and fewer firms wanting to do business with the Government. And two, those firms which continue to contract with the Government will raise prices to offset added costs associated with late payment.

The Prompt Payment Act uses a series of incentives to prod the Government into more timely payment of its bills. In short, the Prompt Payment Act seeks to make the Government a

more efficient and reliable business partner. As the Government makes progress toward this goal we will see increased benefits. We will see a Government contracting system which attracts contractors, rather than one which turns them away. This should lead to increased competition on Government contracts and lower costs.

Government agencies have now had 4 years of experience with the Prompt Payment Act. And we have seen substantial improvement in the Government's bill paying practices. Most notably, we have seen a sharp drop in excessively late payments, those more than 60 days late. Unfortunately, improvements under the Prompt Payment Act have not been as great as we intended.

The General Accounting Office released a study of the effectiveness of the Prompt Payment Act in the summer of 1986. The title of this report just about sums up the present situation. The title reads "Prompt Payment Act—Agencies Have Not Fully Achieved Available Benefits."

The study goes on to find that the full potential of the Prompt Payment Act has not yet been realized. A significant percentage of bills are still being paid later than they should be. In the GAO study, 24 percent of the Government's bills were paid after the prompt payment due date. And the report points out that the number of excessively late payments remains too high. GAO found that 7 percent of the late payments in its sample were between 46 and 150 days late. Some 1.3 percent of the payments were more than 90 days late.

This situation is aggravated by the fact that the interest penalty payments called for under the Prompt Payment Act are often not paid. Indeed, the GAO study shows that Government agencies only paid one of every six interest penalties owed. Over one 4-month period, the GAO report found that the failure to pay interest penalties alone cost businesses some \$15 million owed them.

The GAO report also found that some Government agencies are abusing discounts offered by businesses. Contractors will often offer the Government a discount if payment is made within a specified time frame. Yet, the GAO found that almost a fifth of the discounts taken by the Government occurred after the offered period had expired.

The problems documented in the GAO report are for the most part, directly attributable to agencies seeking to circumvent the act's provisions. Agency personnel have successfully found a number of loopholes in the act. By carefully exploiting these loopholes, Government bureaucrats have managed to undermine the intent of the Prompt Payment Act.

The legislation we are considering today will close these loopholes. S. 328 reaffirms that Congress meant what it said when we passed the Prompt Pay-

ment Act—the Government should pay its bills on time.

Mr. President, I would like to take a few minutes and discuss some of the loopholes which we close with S. 328.

One problem area has involved the 15-day grace period under the Prompt Payment Act. The act directed the Government to pay its bills within 30 days. However, the final version of the act provided agencies with a 15-day grace period in which to make timely payments. What we see are some Federal agencies routinely using the 15-day grace period to extend their payment terms. Thus, the 30-day payment deadline we thought we had established in the Prompt Payment Act has become a 45-day payment deadline in many cases.

This clearly flies in the face of the congressional mandate in the Prompt Payment Act. Yet, we see nearly a fifth of the payments covered in the GAO study were made during the grace period. I can only agree with the assessment of this abuse in the GAO report: "Paying almost a fifth of the payments during grace periods seems to defeat the purpose of having grace periods."

S. 328 speaks directly to this problem. Our bill phases out the grace period in two steps. The grace period is initially reduced to 7 days. And all grace periods are eliminated on October 1, 1989.

A second problem under the existing act has centered on automatic payment of interest penalties. The intent of the act and the regulations implementing the act are clear on this point—interest penalties are to be paid automatically when owed. Despite this clear directive some Federal agencies fail to pay interest when they pay their bills late. I indicated earlier that the GAO calculated that this practice cost business some \$15 million over a 4-month period. I would add that GAO estimates there were some 278,000 unpaid interest penalties in that period.

The reason we see foot-dragging here is simple enough. Agency personnel look bad when they report they have to pay interest penalties. The Office of Management and Budget periodically reviews agency compliance with the Prompt Payment Act and focuses in on the question of interest payments. Thus, if a clever bureaucrat sends out a payment late, but withholds any interest penalty, he may be able to sneak by the eye of OMB. And the odds are that he or she will be successful.

A small business person who has wanted to be paid on a Government contract will likely forego challenging the Government for the interest penalty. The business person has already seen how difficult it was to collect the billed amount. The owner can only imagine the headaches and paperwork which await if they try to obtain the interest penalty payment.

October 9, 1987

## CONGRESSIONAL RECORD — SENATE

S 13961

nois and we would accept it, subject to the acceptance of my friend from Virginia.

Mr. TRIBLE. Mr. President, as the Senator from Illinois said this establishes a 10-day payment term for dairy products. This conforms to industry standards. And the current act already contains special payment provisions for meat products and other perishable products. So it makes good sense. I support it on the Republican side and would urge us to act positively.

Mr. DIXON. I thank the managers.

Mr. KASTEN. Mr. President, I am pleased to join with Senator DIXON in offering an amendment to S. 328 that would ensure 10-day payment for contractors who supply the Government with dairy products, as defined in the Dairy Products Stabilization Act of 1983, including cheese and process cheese products, butter, yogurt, ice cream, and milk. The amendment would also provide for 10-day payment on contracts for food oils and oil-based food products, such as cooking oils, salad oils and dressings, margarine, and mayonnaise.

Mr. President, as everyone knows, the Prompt Payment Act requires the Federal Government to pay an interest penalty whenever it fails to pay its bills on time. As the Government has sought to gain control over its bill paying practices, it has moved to require payment within 30 days on its contracts for commercial products.

This is certainly an improvement over past practices, when payment was sometimes delayed for weeks, and the amendments made by S. 328 will close a number of loopholes that have allowed some agencies to perpetuate lackadaisical bill paying practices. But it is important to note that not all commercial products are priced and sold on the assumption that payment will be made in 30 days. In some industries, even prompter payment terms prevail. For example, meat is sold on 7-day terms, and fresh fruit and vegetables on 10-day terms.

The Prompt Payment Act recognizes these special cases by requiring that payment for meat be made within 7 days—and for fresh fruit and vegetables within 10 days. In the dairy industry—and in the food oil industry—10-day payment terms also prevail. Nonetheless, the Government has refused to honor industry practice and has insisted on 30-day terms in contracts for dairy and food oil products. Even in those rare cases where a company has succeeded in securing a 10-day payment commitment in its supply contract, the Government has countermanded that commitment in its supply orders, specifying that payment will be made in 30 days. Contractors are told to accept these payment terms or take their business elsewhere. This is bad enough—but to make matters worse the Government insists that these suppliers give the Government prices at least as advantageous as those pro-

vided private sector buyers who pay their bills in 10 days.

Mr. President, the whole purpose of the Prompt Payment Act is to ensure fair treatment for companies that do business with the Federal Government. The practices I've described are not fair. It is simply wrong for the Government to demand prevailing prices and then refuse to pay on prevailing payment terms. The fact that the Government has gotten away with this practice is no reason to permit it to continue. We have the opportunity to correct this problem in the Dixon-Kasten amendment, which would require prompt payment as a matter of law.

When the Government enters the commercial marketplace, as the committee report states, the Government "should conform its payment terms to those of the market, unless compelling reasons dictate otherwise." There are no compelling reasons here that would justify ignoring commercial terms. While the committee report urges agencies to honor commercial payment terms, I believe that the problems confronting the dairy and food oil industries demand a legislative solution. Indeed, the committee report cites the experience of these industries in highlighting the problems confronted by industries with prompt payment terms. I am pleased to learn, therefore, that the managers of the bill support this amendment. There simply is no point in waiting for an administrative fix for this problem when we know what the problem is and we know what it takes to fix it.

I urge my colleagues to support this amendment.

The PRESIDING OFFICER. The Senators have yielded back their time on the amendment. All time has expired on the amendment.

The question occurs on the amendment of the Senator from Illinois.

The amendment (No. 945) was agreed to.

Mr. DIXON. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. SASSER. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. DIXON. I thank the managers.

The PRESIDING OFFICER. The Senator from Michigan.

## AMENDMENT NO. 946

(Purpose: To permit a prime contractor and a subcontractor to agree not to include in a subcontract a payment clause that would otherwise be required to be included in such subcontract)

Mr. LEVIN. Mr. President, I send an amendment to the desk and ask that it be reported.

The PRESIDING OFFICER. The clerk will report the amendment.

The legislative clerk read as follows:

The Senator from Michigan [Mr. LEVIN], for himself, Mr. QUAYLE, Mr. RUDMAN, Mr. BAUCUS, and Mr. BINGAMAN proposes an amendment numbered 946.

Mr. LEVIN. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

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

The amendment is as follows:

On page 23, line 12, insert "(1)(A)" before "Each".

On page 23, line 17, strike out all beginning with "which" through line 26 and insert in lieu thereof "described in subparagraph (B), unless the prime contractor certifies to the agency that such contractor—

"(i) has provided notice of payment terms in solicitations for subcontractor bids; and

"(ii) agrees to be bound by such payment terms in any subcontract resulting from such solicitations.

"(B) The payment clause included in a subcontract pursuant to subparagraph (A) shall obligate the prime contractor to pay the subcontractor promptly (as determined in accordance with the prevailing industry standard) out of such amounts as are paid to the prime contractor by the agency for work satisfactorily performed by the subcontractor under such contract.

"(2) Each construction contract awarded by an agency shall include a clause that requires the prime contractor to include, in each subcontract for property or services entered into by the prime contractor and a subcontractor (including a material supplier) for the purpose of performing such construction contract, a clause which obligates the prime contractor to pay to the subcontractor an interest penalty on amounts due in the case of each payment not made in accordance with the payment clause included in the subcontract pursuant to paragraph (1)(A) or the payment terms agreed to pursuant to divisions (i) and (ii) of paragraph (1)(A)—".

On page 24, line 12, insert "(1)(A)" after "(a)".

On page 25, lines 9 and 10, strike out "standards of subsection (a)" and insert in lieu thereof "standards of subsection (a)(1)(A), payment terms agreed to pursuant to divisions (i) and (ii) of subsection (a)(1)(A), or a payment clause included in the subcontract pursuant to subsection (a)(2)".

On page 25, line 21, insert "(2)" after "(a)".

Mr. LEVIN. Mr. President, this amendment is being offered on behalf of myself and Senator QUAYLE, also on behalf of the Governmental Affairs Committee.

Mr. President, before I briefly describe this amendment, let me congratulate our colleagues, Senators SASSER and TRIBLE, for the effort that they have made to bring this bill to the floor.

I happen to be one of the cosponsors of the prompt payment bill. It is a bill which is very necessary to close loopholes in the existing legislation which have allowed us to avoid the intent of the Prompt Payment Act, which is that we pay our bills on time or we pay interest to people who are owed money by the Federal Government.

Senator SASSER and Senator TRIBLE have really worked extraordinarily hard to get to the point where we are now and without their leadership this bill would not be here today. A number of hurdles have been raised

S 13962

## CONGRESSIONAL RECORD — SENATE

October 9, 1987

and indeed I am one who has raised one of those hurdles, so I know personally about hurdle raising. I am the first to congratulate them, as one of their cosponsors and also as somebody who worked closely with them and the staffs who have worked together to try to work out a compromise on a very difficult section 7.

Section 7 of this bill is intended to provide for the subcontractors some equity. Senator SASSER and Senator TRIBLE have pointed out and others on the committee have pointed out and fought hard for the principle that where the general contractors of the Government are paid, the subcontractors should also be paid and that if the general contractor, our contractor, is paid promptly, their subcontractors should be paid promptly. There is a great deal of equity in that principle and they, being Senators who are sensitive to needs of equity, have pointed that out and they have put language in this bill which would provide a flow-through for the subcontractors.

I was troubled, frankly, by what I viewed as some inflexibility in this approach. The approach which was used is a requirement that a provision be inserted in the contracts between the generals and the subs which would require the general contractors in effect pay their subs within 7 days of being paid themselves on all Federal construction projects.

I felt that there was too much inflexibility in that approach, that there are times when the 7-day flow through provision would not be appropriate, that it also would be extraordinarily complex administratively to operate. And so, at the subcommittee level, I tried to delay the effective date of this provision. I failed there.

Along with Senator QUAYLE now, on the floor, we have worked out a provision which I believe would provide some flexibility but also keep the inherent fairness that Senator SASSER and Senator TRIBLE have insisted upon.

This provision would provide that general contractors can opt out of the 7-day flow-through payment requirement in very carefully defined circumstances: If the prime contractor certifies that he has provided notice of different payment terms in its solicitations for subcontract bids and that it will agree to be bound by those payment terms in any subcontract resulting from those solicitations, and if there is a contractual interest penalty for late payments to the subcontractors, whether or not the provision in the contract between the general and the subs is the section 7 provision or some alternative preannounced provision. Under those carefully defined and limited circumstances, we have then permitted an opt out on the part of the general contractor.

Mr. President, this maintains the essential equity which is sought under section 7, but it also permits some flexibility in the provision because of

the unprecedented intrusion in private contracts which section 7 would otherwise have provided.

Mr. President, I know that the provision now has been worked out on both sides. Indeed this is now a subcommittee amendment.

Again, I want to thank my colleagues, the managers of this bill, for the hard work that they put in on the bill and their willingness to work with Senator QUAYLE and me to try to put in a provision which keeps the spirit of the equity which they have insisted on while allowing for some flexibility in the arrangement between these private parties.

The PRESIDING OFFICER. The time of the Senator from Michigan has expired.

The Senator from Virginia controls 5 minutes on the amendment.

Mr. TRIBLE. I am happy to yield to my colleague from Tennessee.

Mr. SASSER. I thank my distinguished friend from Virginia.

Mr. President, the distinguished Senator from Michigan is correct. This has been a contentious amendment. I am pleased that we have been able to arrive at a conclusion here that I think will be equitable for all parties concerned.

I wish to congratulate and commend our colleague from Michigan and the distinguished Senator from Indiana [Mr. QUAYLE] for their cooperation in this effort.

Mr. President, I rise in support of the committee amendment dealing with section 7 of this bill. As originally drafted, section 7 of S. 328 sought to assure subcontractors on Federal construction projects of prompt pay for work performed. This committee amendment preserves that objective, but achieves it in a more balanced manner.

The need for extending prompt pay protection to construction subcontractors has been well established. This issue has been discussed in five hearings over several sessions of Congress. The most recent hearing was a March 19, Governmental Affairs Committee hearing which I chaired. Moreover, the delegates to the 1986 White House Conference on Small Business recommended extending prompt payment protection to such contractors as one of their final recommendations.

These hearings and debate within the small business community established clearly that when subcontractors are not paid promptly, the Government suffers—through higher costs, slower competition, and poorer quality. Now, my colleagues may wonder why this impact is so significant. Because on Federal construction projects, subcontractors perform at least 80 percent on the onsite construction.

To rectify this situation, we reported S. 328 out of the Governmental Affairs Committee with language extending the basic protections of the Prompt Payment Act to Federal con-

struction subcontractors. To address concerns raised by our colleagues from Michigan and Indiana, we have restructured these important provisions in the bill. The language contained in this amendment would still protect subcontractors, but would do so by essentially mirroring what the Prompt Payment Act prescribes for the payment relations between the Government and the prime contractor.

My colleagues will recall that the 1982 act established a 30-day payment term between the Government and the prime contractor—unless the contract specifies otherwise. Section 5 of the bill we have before us today establishes a 7-day payment term between the Government and the prime contractor—unless the contract specifies otherwise. The Government is required to announce all the terms of the prospective contract in advance, that is, before soliciting bids from competing prime contractors.

The committee amendment under consideration would expand this principle of knowing the payment terms before bidding to subcontractors on Federal construction.

Today, a subcontractor bids on a project without the knowledge of the subcontract terms. The subcontractor is legally bound to its bid on that project, since the prime contractor has relied on the subcontract bid, incorporating it into its bid price to the Government. Once the general contractor wins the construction contract with the Government, the general contractor begins to negotiate the terms of the subcontract agreement, starting from a subcontract offered by the general contractor. At this stage, with the Federal contract in its hands, the general contractor is in a very superior bargaining position. If the subcontractor refuses the subcontract terms, especially those relating to payment, the general contractor can shop the subcontract opportunity to other subcontractors until one is found that will accept the terms of its agreement and accept a payment schedule longer than the 7-day industry standard.

As reported by the Governmental Affairs Committee, section 7 would set a minimum standard for the payment provision a prime contractor must include in its subcontracts for Federal construction. It states that the subcontract clause must reflect the "prevailing industry standard." This currently is deemed to be payment of subcontractors by the prime contractor within 7 days of receipt of payment from the Government.

Under the amendment before us, section 7 would be modified to parallel the 1982 act and section 5 of S. 328. It would allow a prime contractor to elect to use an alternative payment term to the "prevailing industry standard." But, if the prime contractor elects to use a payment term other than the "prevailing industry standard" in its subcontracts, it must an-

October 9, 1987

## CONGRESSIONAL RECORD — SENATE

S 13963

nounce that payment term in its bid solicitations to potential subcontractors, and it must agree to be bound by the payment terms in any subcontracts resulting from those bid solicitations. Then, the prime contractor must certify to the contracting agency that it has actually taken these actions.

Section 7, as modified by this committee amendment, will bring greater certainty into the subcontract bidding process on Federal construction projects. Subcontractors will know prior to preparing their bids the time frame in which they will be paid. They will no longer be faced with the moving target they are now confronted with.

Because subcontractors will know the terms of payment in advance of preparing their bids, they will be able to factor in the cost of money. Prudent subcontractors will likely bid lower on projects with longer payment terms. Those prime contractors which offer untenable payment terms will receive higher bids from their subs and are unlikely to be the low bidder for the Government's contract.

Thus, market forces should work to keep subcontract payment terms reasonable in the Federal construction market. They will also serve to keep Federal construction prices lower because subcontractors will no longer have to inflate their bids against the contingency of extended payment terms being foisted upon them during the negotiation of the subcontract agreement.

Mr. President, I urge the adoption of this amendment.

I also have, Mr. President, an analysis of this particular section of the bill which I ask unanimous consent to have printed in the RECORD.

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

EXPLANATION AND STATEMENT OF INTENT  
AMENDMENT TO SECTION 7 PAYMENT CLAUSE  
FOR SUBCONTRACTS UNDER CONSTRUCTION  
CONTRACTS TO BE OFFERED BY SENATORS  
LEVIN AND QUAYLE

Section 7 (Payment Clause for Subcontracts Under Construction Contracts) is designed to address payment problems faced by subcontractors on federal construction projects. As originally introduced, this provision requires that a payment clause meeting two minimum standards be included in each agreement between a federal construction prime contractor and its subcontractors. First, the subcontract payment clause must reflect payment of subcontractors by a prime contractor "promptly (as defined in accordance with the prevailing industry standard)", now deemed to be within seven days of receipt of payment from the Government. Second, Section 7 requires that the subcontract payment clause must entitle the subcontractor to payment of interest, at the same rate applicable between the prime contractor and the Government, if the prime contractor fails to make timely payment as required by the clause mandated by Section 7.

During Committee consideration, clarifying amendments were made to Section 7 which addressed concerns raised by Senator

Levin, Senator Stevens, and others. These amendments, derived from the section-by-section analysis that accompanied the bill at introduction, will: (a) protect the Government from becoming involved in the resolution of performance or payment disputes between the prime contractor and its subcontractors; (b) preserve the option for a prime contractor to manage its subcontractors through the use of the contract administration tools of "withholding" for good cause and "retainage" notwithstanding the minimum payment standard in Section 7; (c) provide that any amounts so withheld or retained from a subcontractor by the prime contractor shall remain in the hands of the Government until such time as the prime contractor determines that the subcontractor is entitled to be paid such funds; and (d) provide that any contractual, administrative, or judicial remedies presently available to contractors or subcontractors for the resolution of payment disputes shall be left unimpaired.

Despite these clarifying amendments, Senator Levin and other Committee Members continued to express concern that Section 7 might be insufficiently flexible to accommodate the myriad payment relationships that can exist between construction prime contractors and their subcontractors. Specifically, while Section 7, as reported, would permit the use of a payment clause resulting in subcontractor payment within seven days or less [for example, the three-day term specified in the AIA Form A-401 (Standard Form of Agreement Between Contractor and Subcontractor)], it would not permit the use of a payment clause that does not specify payment within this period.

An alternative payment clause may be appropriate for any number of valid reasons, and should not be presumed to be abusive of subcontractors. For example, the Committee has learned of a prime contractor who has an excellent reputation for fair dealings with subcontractors, but whose computerized payment system currently results in payments to subcontractors within ten days of payment by the owner, whether a private party or a governmental agency. Without the benefit of this amendment, Section 7 would require this prime contractor, and others in similar situations, to completely revise their subcontractor payment systems without any evidence that they have abused subcontractor funds.

Under the amendment offered by Senators Levin and Quayle, this inflexibility in Section 7 would be addressed by permitting a prime construction contractor to offer its own payment terms during the solicitation of subcontractor bids, if specified conditions have been met. As modified by the amendment, Section 7 would require each prime contractor on a federal construction project to reflect in its subcontracts the "prevailing industry standard" regarding timely payment (that is, payment of its subcontractors within seven days of payment by the federal government), unless the prime contractor has certified to the agency that (i) it has provided notice of alternative payment terms in its solicitations for subcontractor bids; and (ii) it will agree to be bound by such payment terms in any subcontract resulting from such solicitations.

Under the amendment, Section 7 would still require each prime construction contractor to include in all its subcontracts the interest penalty clause specified in Section 7(a)(2), irrespective of whether the subcontract payment clause reflects the prevailing industry standard or alternative payment terms announced during the solicitation of subcontractor bids. This late payment interest penalty provision is necessary to ensure that prime contractors adhere to whatever pay-

ment terms are reflected in their subcontracts, thus helping to ensure that subcontractors are in fact paid in a timely manner.

The amendment is designed to mirror the treatment of payments to non-construction contractors under the Prompt Payment Act. Under the Act, a federal agency is required to pay a prime contractor on the date provided in the contract or, if no specific payment date is established in the contract, within 30 days after receipt of a proper invoice and acceptance of the goods or services by the Government. Similarly, Section 5 (Interest Penalties on Progress Payments and Retained Amounts Under Construction Contracts) of S. 328 requires payment of progress payments to prime contractors on construction contracts within seven days, unless the Government's contract solicitation announces a longer payment period reflecting prevailing private industry practice.

The amendment permits alternative "payment terms" rather than merely an alternative "payment date" because the amendment is intended to encompass a broad variety of alternative payment arrangements. In many cases, it is anticipated that the alternative payment clause would specify payment a certain number of days after the prime contractor's receipt of payment from the agency (for example, 10 days after receipt of payment or 20 days after receipt of payment). In other cases, the alternative payment clause might require payment by a specific date during the month (for example, by the 10th of each month). In yet other cases, the prime contractor's solicitation might establish specific dates for payment (for example, 10% to be paid on March 1, 10% on June 1, etc.).

Irrespective of the particular alternative payment terms established by the prime contractor's solicitation and reflected in the subcontract agreement, these terms must result in specific payment dates that can be objectively determined. A clause that specified subcontractor payment "whenever the prime contractor decides that payment is appropriate", to cite the extreme example, would not qualify as an alternative payment term under Section 7(a)(1). This requirement for specificity is necessary to avoid the inclusion of payment terms that would render meaningless the protections provided by Section 7 and its late payment interest penalty. If the date of payment can not be objectively determined, it will be impossible to determine when interest is due.

It is anticipated that Section 7 will enhance the ability of construction subcontractors to obtain fair and equitable payment terms in their subcontract agreements. At the same time, the amendment will assure much-needed flexibility for contractors to structure their own payment arrangements. Because prime contractors will be required to announce payment terms in their solicitations for subcontract bids and to adhere to the announced terms, subcontractors will be able to make an informed business judgment concerning these terms as they develop their bids and reflect their impact upon the prices offered, or the decision even to tender a bid.

For this reason, it is likely that prime contractors who include fair and reasonable payment terms in their solicitations can expect to receive lower subcontract bids, thus improving their position in the competition for federal construction contracts, which are awarded on a low bid basis. Conversely, prime contractors who insist upon unfair or unreasonable payment terms can expect to receive fewer bids and higher bids, substantially diminishing their chances of winning the prime contract.

S 13964

## CONGRESSIONAL RECORD — SENATE

October 9, 1987

This market pressure should result in favorable payment terms for subcontractors that may approach the "prevailing industry standard" while preserving the flexibility for private parties to vary from this standard. It should also improve the prices offered to the Government, since subcontractors, who perform 80% of the actual work on most federal projects, will no longer have to routinely inflate their bid prices against the contingency of unknown and extended payment terms. Certainly of payment terms should benefit the Government, the subcontractor, and the prime contractor.

ASSOCIATED SPECIALTY  
CONTRACTORS, INC.,

Bethesda, MD, September 30, 1987.

Hon. James Sasser,

U.S. Senate, Washington, DC.

DEAR SENATOR SASSER: The Associated Specialty Contractors and its member organizations are especially appreciative of the strong and extensive efforts you have made on behalf of the specialty contract construction industry in the struggle to pass Prompt Payment Act amendments with protections for subcontractors doing Federal work. We continue to feel that the language of S. 328 as reported out of the Senate Governmental Affairs Committee would provide the most fair and equitable payment provisions for all parties.

However, the exigencies of the moment have mitigated against achieving the goal of bringing that bill to the floor in any kind of timely fashion. Alternative language has been developed in discussions with all parties, which provides more flexibility for prime contractors in setting terms of payment for their subcontractors. This language requires advance notice to subcontractors of any payment conditions outside of the prevailing industry standard and retains provisions for payment of an interest penalty on late payments not meeting those terms. This language is acceptable to the Associated Specialty Contractors.

This measure has been awaiting Senate floor action more than four months. We hope that our acceptance of this alternative will help move S. 328 to swift action and passage. Thank you, again, for your extensive and conscientious work in crafting and moving this legislation.

Sincerely yours,

DANIEL G. WALTER,  
President.

AMERICAN SUBCONTRACTORS  
ASSOCIATION, INC.,

Alexandria, VA, October 2, 1987.

Hon. WILLIAM V. ROTH, Jr.,

U.S. Senate, Washington, DC.

DEAR SENATOR ROTH: When the Senate takes up S. 328, the Prompt Payment Act Amendments of 1987, Senator Levin will introduce an amendment for the Governmental Affairs Committee, concerning Section 7. The American Subcontractors Association supports this amendment.

Section 7, as reported by the Governmental Affairs Committee, required a prime contractor to include a payment term reflecting the "prevailing industry standard" in its subcontracts for federal construction. The Committee amendment would allow a prime contractor to elect to use an alternative payment term to the "prevailing industry standard". But if the prime contractor elects to use a payment term other than the "prevailing industry standard" in its subcontracts, it must announce that payment term in its bid solicitations to potential subcontractors, and it must agree to be bound by the payment terms in any subcontracts resulting from these bid solicitations. Then, the prime contractor must certify to the

contracting agency that it has actually taken these actions.

Section 7, as modified by the Committee Amendment, will bring greater certainty into the subcontract bidding process on federal projects. Subcontractors will know—prior to preparing their bids—the time frame in which they will be paid. Prudent subcontractors will tend to bid lower to prime contractors with shorter payment terms than to prime contractors with longer payment terms. Prime contractors who offer untenable payment terms, thus, are unlikely to be the low bidder for the Government's contract.

Senator Ruth, the members of ASA appreciate your ongoing support for "prompt pay for subcontractors".

Sincerely,

M.R. "Mac" Sullivan, Jr.,

Chairman,

Government Relations Committee.

Mr. SASSER. I thank my friend from Virginia.

Mr. TRIBLE. Mr. President, let me say at the outset that the Senator from Michigan [Mr. LEVIN] is an able and tenacious advocate for the point of view that he has voiced this day.

I strongly supported section 7 as reported by the Governmental Affairs Committee. However, I do believe that the amendment before us will provide subcontractors with the assurance of prompt payment for work performed, while providing prime contractors with additional flexibility. It seems that that is an equitable result and I support it, and I encourage my colleagues to support this amendment.

Mr. President, this provision will provide the basic payment protections of the Prompt Payment Act to subcontractors on Federal construction projects. I have long supported this concept.

As originally reported by the Governmental Affairs Committee, section 7 requires prime contractors on Federal construction to pay their subcontractors according to "prevailing industry standards." This standard is the minimum standard for the payment term a prime contractor must include in its subcontracts for Federal construction.

"Prevailing industry standard" is understood to be payment of subcontractors by the prime contractor within 7 days of receipt of payment from the Government. This is based on a joint policy statement adopted by the boards of directors of the Associated General Contractors of America, the American Subcontractors Association, and the Associated Specialty Contractors.

Mr. President, I ask unanimous consent to have printed in the RECORD a copy of the AGC/ASA/ASC joint policy statement on prompt payment.

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

JOINT POLICY STATEMENT OF ASSOCIATED GENERAL CONTRACTORS OF AMERICA, AMERICAN SUBCONTRACTOR ASSOCIATION, AND ASSOCIATED SPECIALTY CONTRACTORS ON PROMPT PAYMENT

Undue delays by owner, architects/engineers, general contractors, subcontractors,

and sub-subcontractors in processing amounts due to general contractors, subcontractors, sub-subcontractors, and suppliers, or in making timely payments of these amounts, impose hardships and improper financing burdens on the contractors and suppliers and amount to extensions of credit by the contractors and suppliers to their respective higher tiers.

Accordingly, it is the policy of Associated General Contractors and the American Subcontractors Association and the Associated Specialty Contractors that all payments must be made on all contracts promptly. This should include payment for all labor, services, and materials stored on the job site or other approved storage sites as of the closing date of requisitions. This applies to both progress payments and final payments.

All local chapters of the Associated General Contractors, the American Subcontractors Association and the Associated Specialty Contractors are urged to make efforts, singly or cooperatively where possible to persuade all owners, architects/engineers, general contractors, subcontractors and sub-subcontractors to adopt and adhere to this policy in the conduct of their business.

The following schedule of billings, certificates and payments by various participants in the construction process is recommended.

The schedule assumes normal trade contract terms allowing monthly progress payments for work performed and materials suitably stored through the end of the month. This schedule does not refer to payments to suppliers who are not subcontractors.

It is important to note that along the sequence of events, any recipient of a payment request who takes exception to an item of billing should immediately contact the initiating party by telephone and attempt to resolve the matter. Failing resolution, the party taking exception should notify the other party in writing the reasons for the action.

Day of calendar month, and event:

20th—Sub-subcontractors request payment from subcontractors.

25th—Subcontractors request payment from contractor, incorporating the sub-subcontractors request in the billing.

1st—Contractor submits to the owner's representative an itemized application for payment with the necessary supporting data, covering the monthly progress of the entire contract being performed.

5th—The owner's representative issues the certificate for payment to the owner for the amount requested.

10th or sooner—The owner makes payment to the contractor for the amount certified by the owner's representative.

No more than 7 days after receipt—The contractor pays each subcontractor the amount received from the owner on his account promptly but not later than seven days after receipt.

No more than 7 days after receipt—Each subcontractor pays each sub-subcontractor the amount received from the contractor on his account promptly but not later than seven days after receipt.

The schedule should be adjusted by making appropriate billings and payments on the last working day prior to any listed Saturday, Sunday or holiday. It is also recommended that collection efforts be commenced immediately following the day any payment due was not paid.

Mr. TRIBLE. Mr. President, I strongly supported section 7, as reported by the Governmental Affairs Committee. However, I believe the amendment before us will provide sub-



October 9, 1987

## CONGRESSIONAL RECORD — SENATE

S 13965

contractors with the assurance of prompt payment for work performed, while providing prime contractors with additional flexibility.

Congress recognized the need for flexibility in business dealings when we adopted the Prompt Payment Act in 1982. A 30-day payment standard for payments by the Government to prime contractors was established. We require that this 30-day payment term be met unless the Government sets forth a different payment term in its contracts. If a different payment term is used, this must be announced before a prime contractor prepares and submits his bid to the Government.

This amendment accords subcontractors the same rights as the prime contractor. It sets a 7-day payment standard for payments by the prime contractor to its subcontractors. However, if a prime contractor wishes to use a longer payment term in his subcontracts for Federal construction, he may—provided he meets certain conditions.

These conditions include announcing in his solicitations for subcontractors' bids what the alternative payment term will be before the subcontractors prepare and submit their bids. In addition, the prime contractor must agree to be bound by the payment term he announces. This provision will be enforced by requiring the prime contractor to certify to the Federal contracting agency that he has announced his payment term in advance and has agreed to be bound by it.

Mr. President, this provision will allow subcontractors to know the rules of the game in advance of bidding. It will allow subcontractors to know what the payment scheme on a contract will be before they are committed to performing work. The subcontractor can then bid each contract accordingly—bidding lower to prime contractors with shorter payment terms than to prime contractors with lengthy payment terms.

Mr. President, I believe we have crafted a system in which market forces will protect subcontractors from lengthy payment terms. At the same time, we will assure that the subcontractor gets paid in a timely manner or is reimbursed for the prime contractor's use of his funds.

Mr. President, I urge the adoption of the committee amendment to section 7 of S. 328.

Mr. QUAYLE. Mr. President, I urge the Senate to support this amendment offered by myself, Senator LEVIN, and the members of the Governmental Affairs Committee to S. 328, the proposed Prompt Payment Act Amendments of 1987.

The senior Senator from Tennessee and the Senator from Virginia have explained in some detail our amendment and its intent. I shall briefly share my perspective on the question.

The central goal of the original Prompt Payment Act, and these proposed amendments, is to ensure the

Government pays its contractors in a timely fashion. The Prompt Payment Act substantially improved the Federal Government's record in this regard. Ambiguities in the act and in the implementing regulations that were drafted for the agencies have, however, enabled the certain agencies of the Government to not carry out the full intent of the Congress. S. 328 was drafted by the Governmental Affairs Committee, therefore, to rectify these problems and ambiguities. This was and is a worthy goal, and I am a co-sponsor of the bill.

In examining the matter of improving the Prompt Payment Act, the Governmental Affairs Committee, however, heard many horror stories about undue delays that subcontractors have experienced in receiving payment from prime contractors employed by the Federal Government and its agencies. While this fell outside the scope of the original act, it was clearly a serious problem the committee felt it had to address.

I fully support the call for fairness in the business dealings on our Nation's subcontractors with their prime contractors. I have been intimately familiar with the Federal procurement process, given my chairmanship of the Senate Armed Services Committee's task force, and the subcommittee, on the procurement reform. I fully agree with the committee that these experiences are unfortunate and need to be remedied.

I do not, however, believe this concern should be used to insert the Federal Government more deeply into the relationship of private parties—in this case the relationship of a prime contractor to its subcontractors. I questioned one particular aspect of S. 328 as it was reported by the committee—it simply mandated specified benefits and payment schedules, thrusting the Federal Government into the relationship of two private sector entities to control the form and time limitations of a certain portion their contractual relationship.

The evidence supporting title 7's remedy was not in my and Senator LEVIN's judgment sufficient to justify the unpalatable step of inserting the Federal Government's nose in the private business dealings between primes and subs. Further, the specific and narrow terms of section 7 do not make sufficient allowance for the wide range of conditions and special circumstances that face companies doing business in the real world.

Our proposed amendment offers an alternative in fulfilling the intent of the committee in drafting section 7—an alternative that avoids the direct insertion of the Federal Government into the relationship between a prime contractor and its subcontractors. Our amendment allows companies the flexibility needed to cope with reality.

Under our amendment, the prime is given the option of providing notice of payment terms in its solicitations for

subcontractor bids and agreeing to be bound by such payment terms in any subcontract resulting from such solicitations. The primes under our amendment would be required as a matter of principle to pay their subs interest on the amounts due to the subs in cases where a prime has not made a payment to a sub in accordance with their contract's payment clause.

This agreement, I believe, satisfies the concern that the primes currently have no incentive or motivation to promptly pay their subs, yet keeps it the Federal Government from simply specifying in detail the exact arrangements the primes and subs shall adopt regarding payment terms and schedules.

I am very pleased that the members of the Government Affairs Committee have worked with us in addressing our concern, and I welcome their support for this compromise. I urge our fellow Senators to support this amendment.

The PRESIDING OFFICER. Does the Senator from Virginia yield back the balance of this time?

Mr. TRIBLE. The Senator from Virginia does.

The PRESIDING OFFICER. All time has been consumed or yielded back. The question is on agreeing to the amendment of the Senator from Michigan.

The amendment (No. 946) was agreed to.

Mr. LEVIN. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. SASSER. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

## AMENDMENT NO. 947

(Purpose: To provide for interest payments on certain agricultural payments if prompt payment is not made)

Mr. DANFORTH. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report the amendment.

The legislative clerk read as follows:

The Senator from Missouri [Mr. DANFORTH], for himself, Mr. PRYOR, Mr. BUMPERS, Mr. EXON, Mr. KARNES, Mr. BOND, Mr. HEFLIN, Mr. CONRAD, Mr. NICKLES, Mr. GRASSLEY, Mr. DASCHLE, Mr. HARKIN, Mr. MATSUNAGA, Mr. DIXON, Mr. LEAHY, Mr. BENTSEN, Mr. DOLE, Mr. SYMMS, Mr. DURENBERGER, Mr. BURDICK, Mr. BOSCHWITZ, and Mr. KASTEN, proposes an amendment numbered 947.

Mr. DANFORTH. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

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

The amendment is as follows:

On page 21, between lines 10 and 11, insert the following new subsection:

(c)(1) Section 3902 (as amended in subsection (b) of this section) is further amended by adding at the end thereof the following new subsection:

"(h)(1) This section shall apply to contracts for the procurement of property or services entered into pursuant to section 4(h) of the Act of June 29, 1948 (15 U.S.C. 714 et seq.).

"(2)(A) In the case of a payment to which producers on a farm are entitled under the terms of an agreement entered into under the Agricultural Act of 1949 (7 U.S.C. 1421 et seq.), an interest penalty shall be paid to the producers if the payment has not been made within 30 days after the date on which—

"(i) the producers fulfill all of the requirements for payment provided for in the agreement;

"(ii) the Secretary of Agriculture determines the amount of the payment to which the producers are entitled; and

"(iii) if applicable, the producers demand the payment from the Secretary.

"(B) Interest under this paragraph shall accrue beginning on the date the requirements described in this paragraph are met and ending on the date on which the amount owed under the agreement and the amount of the interest penalty is paid.

"(3) Payment of the interest penalty under this subsection shall be made out of funds available under section 8 of the Act of June 29, 1948.

"(4) Section 3906 shall not apply to interest penalty payments made under this subsection."

(2) The amendment made by paragraph (1) shall not be construed to authorize—

(A) a modification of the payment practices (including practices relating to payment due dates) that are prevailing, in the case of agreements referred to in such amendment, on the date of the enactment of this Act; or

(B) a modification of any such agreement that is in effect on such date in order to extend the payment due date in such agreement.

(3) The amendment made by paragraph (1) shall take effect with respect to payments that a producer or business concern referred to in such amendment had not yet received or first became entitled to receive under the terms of an agreement referred to in such amendment on or after April 30, 1987.

Mr. DANFORTH. Mr. President, this amendment is offered on behalf of myself and Senators PRYOR, BUMPERS, EXON, KARNES, BOND, HEFLIN, CONRAD, NICKLES, GRASSLEY, DASCHLE, HARKIN, MATSUNAGA, DIXON, LEAHY, BENTSEN, DOLE, SYMMS, DURENBERGER, BURDICK, BOSCHWITZ, and KASTEN.

It would extend the prompt payment coverage to farmers and farm-related businesses who deal with the CCC.

Mr. President, during the past 2 years, there have been five separate occasions when farmers have not received CCC payments in a timely basis. These delays in payments have affected the farmers themselves, and they have affected agribusiness, as well. During the last delay, last July, from May to July, there was a delay in payment of some \$2 billion in obligations nationwide. The delay lasted 71 days. Farmers around the country were literally hanging on by their fingernails.

Mr. President, what we are talking about here is farm programs that are contractual relationships between the Federal Government and the farmer.

The farmer is told that if he does something, then the Government will pay him for his work product. It is like any other contractual relationship. My assumption had been that the Prompt Payment Act did in fact apply and I believe as a legal matter the Prompt Payment Act does apply to farmers and to agribusiness.

However, that has been called into question. And, therefore, the point of this amendment is to make it absolutely clear that the Prompt Payment Act does apply to farmers and does apply to those who do business with the Federal Government in the agribusiness sector.

I would submit, Mr. President, that it makes no sense whatever. If the Federal Government enters into a contract with a trucking company to haul corn or soybeans and does not pay its bill to the trucking company on time, that trucking company is covered by the prompt payments bill. But when the Federal Government enters into a contract with a farmer to raise the soybeans or the corn in the first place, that is not covered by the Prompt Payment Act.

Now a lot of people criticize the farm program. And I do not intend to open up the whole subject of the farm program and whether the farm program is a good one or a bad one. But the fact of the matter is, it is our program. We have agreed to it. I am sure that there are a lot of contracts that the Federal Government enters into that some of us might criticize.

But we enter into contracts regardless of any criticism that might come, and those contracts are covered by the Prompt Payment Act.

It would seem to me peculiar indeed if the Federal Government got into the business of entering into contracts with farmers, wretched on those promises, did not pay their bills on time—a 71-day delay in the most recent case—and then claimed that farmers are a special case and that they should not receive interest payments under the Prompt Payment Act.

Mr. President, some might say: Well, if the farm programs are covered, is that not a costly matter? CBO estimates that the cost is \$12 million a year to cover farmers under the Prompt Payment Act. That \$12 million, of course, under this amendment, does not come out of the Treasury. This does not require an additional appropriation, does not require the expenditure of additional dollars of Federal money. But, rather, it comes out of the basic CCC program, just as every other payment under the Prompt Payment Act, every other interest payment comes out of the basic program that was delayed in making the payment.

So, it absolutely mirrors the rest of the Prompt Payment Act. I believe it is eminently fair and it is my hope that the Senate would agree to this amendment.

Mr. McCONNELL. Would the Senator yield?

Mr. DANFORTH. How long would the Senator like?

The PRESIDING OFFICER. The Senator from Missouri has control of one-half of the time. The Senators in opposition have control of one-half the time. The Senator from Missouri has control on the amendment at this point.

Mr. DANFORTH. How much time?

The PRESIDING OFFICER. The Senator has 14 minutes remaining.

Mr. McCONNELL. May I have 4?

Mr. DANFORTH. I yield 4 minutes to the Senator from Kentucky.

The PRESIDING OFFICER. The Senator from Kentucky is recognized for 4 minutes.

Mr. McCONNELL. I want to congratulate the Senator for his excellent amendment. It makes no sense for farmers not to be covered by the Prompt Payment Act.

However, what we ought to do is solve the problem entirely. Not only make farmers within or covered by the Prompt Payment Act but assure that this kind of problem does not occur again.

On June 10, I, along with my distinguished colleagues Senators BOND and KARNES, offered an amendment to the trade bill which was approved by a vote of 80 to 15. This amendment proposed to specify a current indefinite appropriation for the Commodity Credit Corporation which would cure this problem for the future.

I certainly think that, if farmer's payments were ever suspended again, it would be important for farmers to be covered under prompt payment and that is why I commend the Senator from Missouri for his leadership in advancing his amendment. The trade bill, of course, is still in conference and I along with Senators BOND and KARNES intend to offer the amendment, once again, in the Agriculture Committee as a part of the reconciliation measure in hopes that we can two track the process of trying to get this problem solved once and for all.

As my friend from Missouri has accurately stated, this is a contractual obligation between the Federal Government and the farmers of this country and we ought to honor it. If, perchance, it is not honored, certainly they ought to be covered by the prompt payment legislation.

So I commend my friend from Missouri. I would ask that he add me as a cosponsor to his amendment and point out to the Senate that Senators BOND, KARNES, and I will be offering, once again, the provision to provide a current indefinite appropriation for the Commodity Credit Corporation in the Agriculture Committee on budget reconciliation.

Mr. DANFORTH. I thank the Senator from Kentucky and I ask that he be added as a cosponsor to the amendment.