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Senate

The Senate met at 10 a.m. and was called to order by the Honorable KIRSTEN E. GILLIBRAND, a Senator from the State of New York.

PRAYER

The Chaplain, Dr. Barry C. Black, offered the following prayer:

Let us pray.

Almighty God of love, whose plan for history is to bring unity to our world, bring unity to this legislative body. Lord, we don't ask for uniformity, which tries to find the lowest common denominator. We desire true unity with its bountiful diversity. Help our lawmakers to create an environment for such harmony. Give them the wisdom to appreciate each other and to honor their differences. May they see the good, even in those who oppose their views, knowing that out of differences can come the synthesis of truth and action that represents maximum wisdom and influence. Empower them to serve one another in a way that honors You.

We pray in Your loving Name. Amen.

PLEDGE OF ALLEGIANCE

The Honorable KIRSTEN E. GILLIBRAND led the Pledge of Allegiance, as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore (Mr. BYRD).

The legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, June 11, 2009.

To the Senate:

Under the provisions of rule I, section 3, of the Standing Rules of the Senate, I hereby appoint the Honorable KIRSTEN E. GILLIBRAND, a Senator from the State of New York, to perform the duties of the Chair.

ROBERT C. BYRD,
President pro tempore.

Mrs. GILLIBRAND thereupon assumed the chair as Acting President pro tempore.

RECOGNITION OF THE MAJORITY LEADER

The ACTING PRESIDENT pro tempore. The majority leader is recognized.

SCHEDULE

Mr. REID. Madam President, following the remarks of the leaders, the Senate will be in a period of morning business until 2 p.m. and Senators will be allowed to speak therein for up to 10 minutes each. The first hour is equally divided between the two leaders or their designees, with the Republicans controlling the first half and the majority controlling the next half.

Following morning business, the Senate will resume consideration of H.R. 1256, the Family Smoking Prevention and Tobacco Control Act. The time until 2:30 will be equally divided and controlled between Senators DODD and ENZI or their designees, from 2 to 2:30. At 2:30, we will vote on passage of the bill.

MEASURES PLACED ON CALENDAR—S. 1232 and H.R. 2751

Mr. REID. Madam President, I understand there are two bills at the desk due for a second reading.

The ACTING PRESIDENT pro tempore. The majority leader is correct.

The clerk will read the titles of the bills for a second time.

The legislative clerk read as follows:

A bill (S. 1232) to amend the Federal Food, Drug, and Cosmetic Act with respect to the importation of prescription drugs, and for other purposes.

A bill (H.R. 2751) to accelerate motor fuel savings nationwide and provide incentives to registered owners of high polluting automobiles to replace such automobiles with new fuel efficient and less polluting automobiles.

Mr. REID. Madam President, one is the drug reimportation legislation that has been around for a number of years. We are trying to move forward on that legislation. Senators DORGAN, MCCAIN, SNOWE, and a number of people are very interested in that legislation. We are going to try to work it out and have this on the Senate floor on the earliest possible date. The other one is the so-called cash for clunkers bill.

I object to any further proceedings with respect to these bills en bloc.

The ACTING PRESIDENT pro tempore. Objection is heard. The bills will be placed on the calendar.

HONORING OFFICER STEPHEN T. JOHNS

Mr. REID. Madam President, yesterday, this city and our country experienced a terrible and horrifying tragedy. A man by the name of Stephen Johns went to work every day for the last 6 years at one of our Nation's most moving museums—a living memorial to one of our world's most horrific atrocities—the Holocaust Memorial Museum.

While standing guard yesterday at that U.S. Holocaust Memorial Museum, Mr. Stephen Johns was killed while protecting thousands of others who were inside the building from the same fate that he suffered. His death has shocked, upset, and angered the Senate, our Nation, and all who detest such senseless bloodshed.

Mr. Johns was murdered in a place built to memorialize humanity's most unspeakable murders. He was a victim of violence and hatred in a place dedicated to teaching us the evils of violence and hatred. He was a target of intolerance in a place created for reflection on the consequences of intolerance. His death reminds us that we have much more work to do.

Stephen Johns was just 39 years old. He had a wife and a son. He grew up in Temple Hills, MD, just a few miles south and east of where I stand today. He still lived in that community. Mr. Johns started working at the Holocaust Museum after spending a year in New Orleans in the aftermath of Hurricane Katrina.

Those who knew Mr. Johns called him ''Big John'' and ''a gentle giant.'' Those who knew him describe him as caring, polite, friendly, and helpful. Even those who didn't know him are deeply saddened by his loss and inspired by his heroism.

In the spirit of the museum where every day he so bravely reported for duty, it is our duty to keep alive his memory. Today, the Holocaust Museum is closed. Its flags fly at half staff. When it opens tomorrow, it will continue to serve as one of our Nation's most poignant reminders of the inexcusable racism, hatred, violence, and cruelty that we must never stop trying to erase from our world. When it opens tomorrow, and every day thereafter, Stephen Johns' courage and courtesy will be missed.

HEALTH CARE

Mr. REID. Madam President, our plan to fix America's broken health care system is based on a simple premise: when it comes to keeping ourselves and our loved ones healthy, people—not corporations—should be in the driver's seat.

We have a plan to right that wrong. That plan is guided by three goals: One, lower the high costs of health care; two, ensure every American has access to that quality, affordable care; three, let people choose their own doctors, hospitals, and health plans.

One of those choices should be a public option. This has two primary benefits: First, people can choose to get their insurance from someone other than a greedy private insurance company; second, the very existence of that public option means there is more competition in the market. As a result, the private options will have to serve their customers even better.

The Republicans often like to pretend the government will force you to take the public option. Every time you hear them say that, you know they are not interested in honest debate. After all, it is right in the name; it is a public ''option.'' So talking about government forcing anybody to do anything is simply unfair and not accurate. It is a public option, meaning you have choices.

If you have coverage, and you like it, you can keep it. You should be able to choose the best coverage for your family. You should be able to compare benefits and prices instead of surrendering to out-of-control corporations. You, the individual, should be in control of your own family's health decisions.

I am confident that both private insurance companies and the option of a public plan can live in harmony. When you send a birthday present to a relative—say, I want to send something to one of my children in Nevada—the products that I choose can be sent by FedEx, UPS, DHL, or you can choose the U.S. Postal Service. The Postal Service may not be perfect, but because that public option is there, the private companies—FedEx, UPS, and DHL—know they cannot overcharge, rip you off, or slack in their service.

Just like our proposal for the health care system, you don't have to choose the Postal Service. But it is good to know it is there. For some, it is all they can afford. I hear every day from Nevadans who are asking for our help. They are people turned down for health coverage by insurance providers who care more about profits than people; people who lost their health coverage when they lost their jobs and now have no means of getting it back; people who play by the rules and rightly demand our health care system be guided by common sense.

Nearly two-thirds of all bankruptcies are caused by medical problems and the exorbitant bills that ensue. Many of the foreclosures are both a cause and an effect for the global credit crisis and can be traced back to health insurance costs.

If you agree we already have enough economic problems on our hands, if you agree we cannot wait another year while 50 million Americans live without any options to stay healthy, then you will agree now is the time for action, not partisan games.

Insurance companies are holding Americans' health hostage. Far too many people cannot afford the ransom. If we are going to fix our broken health care system, we are going to have to return control to the people who need that care.

I yield the floor.

RECOGNITION OF THE MINORITY LEADER

The ACTING PRESIDENT pro tempore. The Republican leader is recognized.

HEALTH CARE

Mr. MCCONNELL. Madam President, the American people are frustrated with the U.S. health care system. But they are also increasingly concerned about some of the proposals coming from Washington. Now the alarms are beginning to sound. As reported in today's New York Times, the Nation's doctors are strongly opposed to the so-called government plan that appears to be gaining steam in Washington. The American Medical Association says the government plan threatens to restrict patient choice by putting out of business existing health plans that cover nearly 70 percent of Americans.

One estimate suggests that 119 million Americans could lose the private coverage they have as a consequence of the government plan. Moreover, the AMA, in its statement from yesterday, notes that ''the corresponding surge in public plan participation would likely lead to an explosion of costs that would need to be absorbed by taxpayers.''

Republicans and Democrats alike agree that health care reform is needed in this country. But a government plan is not the kind of reform the American people want. They want real reform for a system that's in serious need of it. Unfortunately, what some in Washington are proposing instead is the illusion of a reform that will replace what is good about health care in America with something that is far worse.

Instead of making health care more affordable and accessible, these proposals could make treatments and procedures that everyday Americans currently take for granted less accessible or even impossible to obtain—even as these proposals would add to the colossal and unsustainable debt that already burdens the Federal Government.

I have spoken repeatedly on the Senate floor about the dangers of a government-run health plan. By drawing on the experience of countries that have already adopted these government-run system I have pointed out the serious problems government-run health care creates for millions around the world. I have noted that a common defect of these government-run plans is that they deny, delay, and ration health care. And I have noted that the primary culprit in almost every case is the so-called government board that these countries have established to decide which treatments and medicines patients in these countries can and cannot have. This morning I would like to focus again on these so-called government boards, so people have an idea of what they could expect from a government-run plan here in the U.S.

Britain's government board, the National Institute for Health and Clinical Excellence, or NICE, is responsible for setting guidelines on the use of drugs and treatments for patients in that country. The government bureaucrats at this agency are supposed to weigh the effectiveness of a medicine or a treatment against its cost to the government. If the government thinks that a drug is too expensive, it can refuse to make it available to patients, regardless of any potential benefits.

Last summer, the board in Great Britain denied patients in that country access to four kidney cancer drugs that have the potential to extend life. Here's the chilling explanation it gave to justify the move.

> Although these treatments are clinically effective, regrettably the cost . . . is such that they are not a cost-effective use of . . . resources.

After a public outcry, NICE reversed its position on one of the drugs but affirmed its ban on the other three.

In New Zealand, a government board known as Pharmac reviews potential drugs and treatments and decides whether they should be prescribed to

patients in that country. Pharmac says its goal is to use its ''expertise'' to ''help . . . decide which new hospital medicines are cost-effective.'' And like the government board in Great Britain, if Pharmac does not think a drug's cost justifies its benefits, it can refuse to make it available to patients or doctors who want it.

One drug that Pharmac did not think was worth the cost was Herceptin, which had proven to be effective in fighting breast cancer. Although Pharmac began covering the drug for advanced breast cancer in 2002, it refused to fund the drug for early stage breast cancer. After a public outcry and a reevaluation of the decision, Pharmac finally relented and decided to allow the drug for early stage breast cancer in 2007, but only for a limited amount of treatments.

These kinds of decisions about which drugs should or should not be covered are based on a method commonly known as ''comparative effectiveness.'' Comparative effectiveness is not alien to the U.S. health care system. Indeed, the stimulus bill Congress passed earlier this year included significant funding to lay the groundwork for just this kind of research in the United States. In my view, the more research we do on the effectiveness of drugs and treatments the better. Doctors should have as much good information as possible in dealing with their patients.

What Americans strenuously oppose, however, is the government using this information to deny access to treatment or procedures that patients and doctors choose to pursue—just as government agencies such as NICE and Pharmac do in Great Britain and New Zealand. Americans oppose this kind of government-mandated limitation on health care. They simply will not allow it.

That is why my friend, Senator KYL, will propose a bill that will prohibit the government from ever using comparative effectiveness in this way. It is a wise bill, and it should be included as a part of any health reform we consider. Americans want their doctors to have clinical information on which treatments work best and which ones do not. But government bureaucrats should not be able to use that information to determine what treatments Americans can or cannot get. That is a decision we currently leave between a patient and his or her doctor, and that is where it should remain.

Americans want to see changes in the health care system, but they don't want changes that deny, delay, or ration care. They want reforms that control costs, even as they protect patients. They want us to discourage frivolous medical liability lawsuits that limit access to care in places such as rural Kentucky. They want prevention and wellness programs that cut costs by helping people quit smoking, overcome obesity, and diagnose illnesses early. And they want us to address the needs of small businesses without imposing new mandates or taxes that kill jobs.

All of us want reform, but the government-run plan some are proposing in the United States is not the kind of change Americans are looking for. We should learn the lessons from problems we have seen in countries such as Great Britain and New Zealand. We should learn a lesson from the nightmares so many people in these countries and their families have endured as a result of government-run health care and the bureaucratic government boards that almost always come with it.

Madam President, I am about to yield the floor, but before I do that, I see my friend from Arizona is on the floor. I want to express to him my gratitude for his leadership on this very important issue. The most important issue we will be dealing with this year is the question of whether the government should literally take over and run 16 percent of our economy. We have seen the government take over banks, insurance companies, and automobile companies. Now it appears as if there is an effort underway to take over health care as well.

I thank my friend from Arizona for the contribution he has made on this important issue in the past and say we are looking forward to working together on this in the future.

Madam President, I yield the floor.

RESERVATION OF LEADER TIME

The ACTING PRESIDENT pro tempore. Under the previous order, the leadership time is reserved.

MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, there will now be a period for the transaction of morning business until 2 p.m., with Senators permitted to speak for up to 10 minutes each, with the first hour equally divided and controlled between the two leaders or their designees, with the Republicans controlling the first 30 minutes and the majority controlling the second 30 minutes.

The Senator from Arizona.

HEALTH CARE REFORM

Mr. MCCAIN. Madam President, I rise to discuss two issues this morning, health care reform and also the pending supplemental spending bill that, according to news reports, does not include the Senate language that explicitly allowed President Obama to keep photos of detainee abuse during the Bush administration confidential.

I thank my friend from Kentucky, the Republican leader, who has shown such impressive leadership on, as he describes, probably the most important domestic issue that certainly will be addressed by this Congress. I look forward to working with my colleagues over the next few weeks on legislation reforming our current health care system.

Americans are looking to Congress to enact health care legislation that provides all Americans affordable access to health insurance and the ability to choose the health insurance policy that fits each American's needs. Yesterday, it was reported that 62 percent of Americans support Congress enacting a major overhaul of the U.S. health care system, according to a Diageo/Hotline poll.

I believe health care should be available to all and not limited to where you work or how much money you make. I believe any proposal must use competition to improve the quality, availability, and affordability of health insurance and match people's needs, lower prices, and promote portability. I believe American families, not Washington bureaucrats or insurance companies, should be in charge of any health care decision. But I don't believe we need to expand government's bureaucracy to control one-sixth of our economy to ensure the uninsured get health coverage. Nor do I believe Americans should be asked to pay more in taxes to cover the costs of any comprehensive health care reform legislation.

Last month, the Wall Street Journal stated:

> But now Democrats need the money to finance $1.2 trillion or more for their new health insurance entitlement. . . .
>
> A sampler:
>
> End or limit the tax-exempt status of charitable hospitals. . . .
>
> Make college students in work-study programs subject to the payroll tax. Also targeted are medical residents, perhaps on the principle that they'll one day be ''rich doctors.''

I agree that any real health care reform proposal must address the tax treatment of employer-provided health benefits, but not in such a way that would force Americans to fork over more of their hard-earned money to the Federal Government, particularly during these difficult times.

Today individuals who receive health insurance through their employer are not taxed on their health care benefits, as we know. However, those who purchase coverage on their own do not receive such a tax break. That is unfair and regressive. It hits those who need this tax break the most—the self-employed or working poor whose employer does not offer health insurance coverage.

To offset the taxable treatment of this income, I believe Americans should have funds returned to them to assist with the cost of acquiring health insurance. An approach such as this treats individuals equally, in stark contrast to the system we currently have.

Key to any proposal is a policy that allows people to have accessible, portable, and affordable health insurance coverage. Policies should also address what I hear from Americans everywhere I go—choice. Americans want

choice. They want choice of their doctor, their care, their coverage, and employment freedom—freedom to seek employment that is not dependent on whether an employer provides insurance coverage. This is particularly important in today's difficult economic times when Americans are uncertain about whether they will have a job tomorrow. Some, including the President, criticize this approach. However, the New York Times reported:

The Obama administration is signaling to Congress that the President would support taxing some employee health benefits.

While I appreciate the President's and the Democrats' new consideration of such a proposal, it is not acceptable to turn this into a tax-and-spend health care reform. Any new resources derived from changing the existing tax treatment of private health insurance should be devoted to a fairer and more efficient mechanism for Americans to acquire private insurance.

The United States spends over $2.4 trillion on health care. Health insurance premiums continue to rise as employer-based family coverage increased and Medicare and Medicaid spent $818 billion in 2008 and is projected to reach $1.7 trillion by 2018.

I also want to mention something that should trouble every American and every Member of this Chamber.

Last week, I spoke about what the special interests were doing to derail much needed health reform dealing with prescription drugs, a reform that is very bipartisan. Any Member in this Chamber knows I work across the aisle on policies that are important to the American people. Health reform is one issue that fundamentally must be bipartisan.

All Americans are affected by what we do here, so we should be working in a bipartisan manner. It is with extreme regret that I read in ''Roll Call'' this morning about a meeting that Democratic staff was threatening—let me repeat—threatening Democratic lobbyists or the organizations they represent against meeting with Republicans and that attending meetings with Republicans ''will be viewed as a hostile act.''

This is outrageous. I hope the article is inaccurate. I hope the staff on the other side does not view health reform as a process they control by threats and hostilities. I hope we are above that.

Madam President, I ask unanimous consent to have printed in the RECORD the ''Roll Call'' article.

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

[From the Roll Call, June 11, 2009]

BAUCUS AIDES WARN K STREET

(By David M. Drucker, Anna Palmer and Kate Ackley)

Top aides to Senate Finance Chairman Max Baucus (D-Mont.) called a last minute, pre-emptive strike on Wednesday with a group of prominent Democratic lobbyists, warning them to advise their clients not to attend a meeting with Senate Republicans set for Thursday.

Russell Sullivan, the top staffer on Finance, and Jon Selib, Baucus' chief of staff, met with a bloc of more than 20 contract lobbyists, including several former Baucus aides.

''They said, 'Republicans are having this meeting and you need to let all of your clients know if they have someone there, that will be viewed as a hostile act,' '' said a Democratic lobbyists who attended the meeting.

''Going to the Republican meeting will say 'I'm interested in working with Republicans to stop health care reform,' '' the lobbyists added.

Republican leaders have been meeting with health care stakeholders for months, with those sessions occurring ''more frequently than once a month,'' according to a senior Senate GOP aide.

The stated purpose of Thursday's meeting, organized by Sen. John Thune (R–S.D.), is to discuss proposals for how to pay for health care reform.

But the underlying motivation for the get-together is to encourage health care lobbyists and stakeholders concerned about the Democrats' health care reform plans to speak out publicly.

''They need to speak up,'' one Senate Republican leadership aide said. ''They need to help us help them.''

Thune said Democrats are using threats and intimidation to keep unhappy stakeholders silent.

''If you don't engage on this thing, this train's leaving the station,'' Thune said. ''If you want [Republicans] to have more influence, you've got to engage.''

One longtime health care lobbyist agreed that the GOP frustration is spilling out of the Capitol and onto K Street.

''It is notable that Republicans are really finding their voice, and their level of frustration is building with the stakeholders' inability or refusal to speak out,'' this lobbyist said. ''They're getting frustrated. Republicans are doing it themselves.''

One senior Democratic source charged that Thune's meeting and the supposed motives behind it are in fact a smoke screen for killing health care reform altogether.

''While Democrats and many Republicans are working collaboratively to reform health care, a small group of Republicans appear all too eager to derail this promising, bipartisan effort,'' this source said. ''It's politics as usual, it's disheartening and it's a shame.''

Senate Republicans are opposed to plans by President Barack Obama and Congressional Democrats to implement a government-run, public plan option as a part of health care reform. They also are concerned with how Democrats plan to pay for reform.

Recognizing they don't have the votes to stop legislation on their own, Republicans are pushing their natural allies in the business community to help bring public pressure to bear as another way to influence the outcome.

Obama has set Oct. 15 as the deadline for approval of health care reform, and Democratic leaders in Congress are rushing to clear bills from their respective chambers by the end of July.

''Our effort has been to get these folks to speak their mind,'' one senior Senate Republican aide said.

After months of holding their tongues while inclusive, bipartisan negotiations continued in the Senate Finance and Health, Education, Labor and Pensions committees, the business community has now considered speaking out, given their displeasure with the HELP panel's reform bill, which was made public on Tuesday.

But with Baucus' office still warning dissenters that anyone who makes their opposition public could be permanently excluded from future negotiations, the groups representing businesses, health care providers, hospitals and similar stakeholders are still wavering on whether to voice their concerns publicly.

The lineup of lobbyists who attended the Wednesday session included a cast of Democratic insiders similar to that at previous meetings convened by Baucus' staff. The participants included: Jeff Forbes, a former Baucus chief of staff who lobbies at Cauthen Forbes & Williams; Jonathon Jones, a partner with Peck, Madigan, Jones & Stewart; Tarplin Strategies' Rich Tarplin, an assistant secretary at Health and Human Services in the Clinton administration; another former Baucus top aide, David Castagnetti, of Mehlman Vogel Castagnetti and OB–C Group founder Larry O'Brien.

Democratic sources noted Wednesday that Baucus is courting Republican support and remains committed to treating all stakeholders fairly.

On Wednesday, he met with Senate Minority Leader Mitch McConnell (R–Ky.) in the Capitol, part of a marathon day of bipartisan meetings that included a session with his GOP colleagues at the White House and discussions with Republican members of the Finance Committee.

''Chairman Baucus wants to continue to keep health care stakeholders informed of the progress on health reform,'' said the Senator's Finance Committee spokesman, Scott Mulhauser. ''This is a lengthy, transformative process, and meetings like these are an essential part of the ongoing, bipartisan effort to continue to keep everyone at the table working together.''

One lobbyist who attended the Wednesday meeting with Baucus' staff said that the message was more bipartisan. ''They said they anticipate having a bipartisan bill and that the process is going well with Republicans,'' this lobbyist said. But, the lobbyist added, Baucus' team did warn, ''If your clients attack the process or the product, it's going to be hard to work with you.''

As for Baucus, he told reporters earlier this week that he was not aware of health care stakeholders being threatened by his staff to play ball with the Finance Committee-led negotiations or risk being blackballed from the process.

''I'm sure they can all say what they want to say,'' Baucus said, referring to GOP accusations that health care lobbyists have been subject to intimidations and threats. ''It's news to me. I don't think so. I don't know of any.''

Republican lobbyists said they have not felt any threats from their party.

''For a while, Republicans have cautioned industry to be careful about getting in bed with the administration or Kennedy or Baucus too early,'' said Janet Grissom, a lobbyist at Peck, Madigan, Jones & Stewart, who was once a top aide to McConnell.

Mr. MCCAIN. Madam President, I ask unanimous consent for 3 additional minutes.

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

DETAINEE PHOTOS

Mr. MCCAIN. Madam President, it appears the House Democrats, according to a ''Roll Call'' article this morning about the supplemental bill—I ask unanimous consent to have printed in the RECORD this morning's ''Roll Call'' article titled ''Intraparty Fights Pervade Agenda'' concerning the war supplemental bill.

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

[Roll Call, June 11, 2009]

INTRAPARTY FIGHTS PERVADE AGENDA

(By Steven T. Dennis and Emily Pierce, Roll Call Staff)

Democratic leaders appeared to clear the way Wednesday for passage of a $100 billion war supplemental, even as they worked furiously to repair internal rifts over health care and climate change legislation.

The war bill, which has swollen with items including a cash-for-clunkers incentive, will eliminate Senate language explicitly allowing President Barack Obama to keep photos of detainee abuse during the Bush administration confidential.

That language was included by the Senate and is backed by Obama and Republicans, but it has been a deal-breaker for House liberals like Financial Services Chairman Barney Frank (Mass.).

Frank and other Democrats who opposed the war bill originally, have committed to voting for it in order to help carry a $108 billion package of loans to the International Monetary Fund, an Obama priority.

Assuming no Republican support, Democratic leaders need 18 of 51 anti-war Democrats to back the bill, a number that they appear likely to reach despite the continued opposition from leaders of the Congressional Progressive Caucus.

House Republican leaders had derided the IMF money as a ''global bailout'' and vowed to whip hard to defeat the supplemental with it included.

And even moderate House Republicans from auto industry states appeared unlikely to be won over by the inclusion of a cash-for-clunkers provision aimed at jump-starting the auto industry.

''That's going to have no bearing on people's votes on the bill,'' Rep. Fred Upton (R–Mich.) said. ''They're not going to get hardly any Republican votes.''

The outcome of any Senate vote on the supplemental conference report remains uncertain, given that Sens. Joe Lieberman (ID-Conn.) and Lindsey Graham (R–S.C.) threatened to not only filibuster the bill, but also block other Senate business if the supplemental did not include their language barring disclosure of the detainee abuse photos.

One senior Senate Democratic aide said Lieberman and Graham's threat to hold up the supplemental indefinitely was unlikely to last and predicted that Defense Secretary Robert Gates would likely pressure the two defense hawks to relent so that funding for the wars wouldn't run out.

The trickier problem is what delay tactics Graham and Lieberman might use to stymie Senate action on other bills. The senior Senate Democratic aide acknowledged that Senate Majority Leader Harry Reid (D-Nev.) and Speaker Nancy Pelosi (D-Calif.) might have to come up with a plan for passing the language on some other bill that would be able to pass the House, but this aide noted that Obama has the strongest hand in getting Graham and Lieberman to stand down.

Senate Democratic aides said the language to close the prison at Guantanamo Bay, Cuba, was designed to satisfy the Obama administration's need to transport terrorists for trial, as well as to ease, for the most part, Democrats' fear of political repercussions from having detainees permanently housed in the United States.

The language would allow terrorists to be in the U.S. for trial only, which the senior Senate Democratic aide said would ''give Obama some flexibility while also mollifying those that have NIMBY problems.''

But the supplemental has been largely a sideshow to the big push behind the scenes on health care, especially from the White House.

One House Democratic aide to a liberal lawmaker said left-leaning Members have been much more focused on health care reform and are generally happy with the direction negotiations on the issue are going.

''The debate is no longer whether there will be a public plan; it's over what the public plan will look like,'' the aide said.

Democratic House chairmen have dismissed a call from conservative Blue Dogs for a ''trigger'' option that would delay a government-sponsored health care plan, but there are still numerous fights going on behind the scenes—including on the makeup of the plan and how to pay for it.

Some Members fear that a Medicare-style plan that forces doctors to participate will provoke a revolt; others worry that a public plan may ultimately swallow up the entire marketplace.

But parochial concerns are also proving paramount, with individual lawmakers demanding answers on how it will affect their own districts. Rep. Dennis Cardoza (D-Calif.), a leading Blue Dog, said his district is plagued by a lack of doctors in part because of low reimbursement rates under government health programs.

''If that's not addressed, I'm not voting for the bill,'' he said. ''We have huge amounts of details to put on the bones.''

But health care isn't the only issue sparking Democratic intraparty battles.

The cap-and-trade bill limiting carbon emissions, largely negotiated behind closed doors in the House, has rural Democrats balking.

House Agriculture Chairman Collin Peterson (D-Minn.) said Wednesday that Democrats have reached an impasse on the climate change bill. He cast doubts that his committee would pass the bill by next week.

''I think it's very doubtful that we can get anything done by then,'' Peterson said.

Pelosi set a June 19 deadline for committee action on the bill, although she left open the possibility of an extension.

Peterson previously estimated that 45 Democrats would side with him in opposing the climate change measure if an agreement wasn't reached. On Wednesday, he said that number has likely grown.

''The more people look at this, the more problems they've got. My list has grown since I've been looking at it,'' Peterson said.

For his part, Energy and Commerce Chairman Henry Waxman (D-Calif.) said that there are ''very constructive'' discussions taking place and that he still wants the bill on the floor before the July Fourth recess.

House Majority Leader Steny Hoyer (D-Md.) said he expected to bring the war bill to the floor next week. The conference committee was scheduled to meet at 3 p.m. today.

Mr. MCCAIN. I quote from it:

The war bill, which has swollen with items including a cash-for-clunkers incentive, will eliminate Senate language explicitly allowing President Barack Obama to keep photos of detainee abuse during the Bush administration confidential.

The Graham-Lieberman amendment that would classify these photos was accepted by voice vote. In other words, any Senator who wanted to object or vote against it could have called for a vote. Instead, it was unanimously adopted.

According to the ''Roll Call'' article I quoted, that provision will be removed from the emergency supplemental. According to that article:

One senior Democratic aide said Lieberman's and Graham's threat to hold up the supplemental indefinitely [unless their provision was included] was unlikely to last and predicted that Defense Secretary Robert Gates would likely pressure the two defense hawks to relent so that funding for the wars wouldn't run out.

I think this Democratic aide highly underestimates Senator LIEBERMAN, Senator GRAHAM, and the rest of us.

I had a conversation with General Petraeus the day before yesterday. I believe those conversations are confidential, and I asked his agreement to quote from him: If these photos are released, it would harm the ability of the United States military to pursue our national security interests and could put American lives in danger. That is a serious statement from the most respected military leader this Nation has.

I want to point out something very important. Today the President of the United States could issue an Executive order classifying those photos and not allowing them to be released. He could do it today. It is time for the President of the United States to stand up to the leftwing of his party for the good of the national security of this Nation.

I join others, that if that supplemental comes over without the provision which was adopted unanimously by the Senate to make sure those photos are not released because of the harm it would do to America's effort in combating radical Islamic extremism throughout the world and put the lives of the men and women who are serving in our military in greater danger—I intend to join my friends Senator LIEBERMAN and Senator GRAHAM in doing everything we can to oppose such legislation.

This war supplemental is intended to help us win this battle, the war on terrorism, dare I say. It is supposed to help the men and women who are serving in Iraq and Afghanistan as they pursue an implacable and evil enemy and try to instill democracy and freedom in these countries. And if these photos are made public, it will harm their effort and put their lives in danger.

I urge my colleagues to join me in opposing a bill that would eliminate the provision that prevents these photos from being published, and I call on the President today to relieve this pressure and declare, by Executive order, that these photos are classified and not to be released to the world's public.

Madam President, I yield the floor, and I suggest the absence of a quorum.

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

The legislative clerk proceeded to call the roll.

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

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

CLIMATE CHANGE

Mr. BARRASSO. Madam President, the House of Representatives is prepared to pass the President's energy tax. It is also known as the American Clean Energy and Security Act. The act, therefore, is known as ACES—American Clean Energy and Security Act. ACES is the right thing to call this particular bill because it gambles—it gambles—with the future of the American people. In blackjack, the dealer might have an ace that is showing, but one card in the dealer's hand is always hidden. In this case, the hidden card is the card that shows the real cost of this bill to the American taxpayer. What the taxpayer doesn't know is that the game is rigged. The taxpayer is going to lose. No matter how many times the majority adds to this hand another giveaway to special interests, another tax break to offset the monumental cost of this bill, the end will be just the same: The taxpayer goes bust and Washington will win the game.

ACES is the product of a supermajority that the Democrats have in the House of Representatives. Given the rules and given the procedures of the House, reasonable amendments are going to be defeated or even blocked from ever being considered. The final product will not be a real starting point to begin this debate on climate change.

ACES is going to have a devastating effect on our economy, and we will see there will be no environmental benefit from doing this bill—none. That is not just my belief or my assessment alone, it is also the belief of others.

Martin Feldstein, noted Harvard economist, in a recent Washington Post article stated:

> ACES will have a trivially small effect on global warming while imposing substantial costs on all American households.

Let me repeat that: a trivially small effect, while imposing substantial costs. How big are the costs? Well, he cites the Congressional Budget Office, which estimated that the resulting increases in consumer prices needed to achieve just a 15-percent reduction in carbon dioxide—slightly less than the target of this bill—would raise the cost of living $1,600 a year, every year, for every family in America. That is a $1,600 tax on every American family every year.

The Heritage Foundation predicts that the ACES approach could cost the economy $9.6 trillion and more than 1 million lost jobs into the future. And these are just the raw numbers. The real potential for economic pain goes much further.

David Sokol, chairman of MidAmerican Energy, points out that ACES—this bill—could be a bonanza. And for whom will it be a bonanza? For more Wall Street corruption and more Wall Street greed because ACES is going to deal in investment banks, it is going to deal in hedge funds and other speculators who want to speculate in the cap-and-trade market. David Sokol points out:

> If you liked what credit default swaps did to our economy, you're going to love cap and trade.

Coincidently, the House bill actually allows for credit default swaps.

He is not alone in his assessment. British scientist James Lovelock, who is a noted chemist and environmentalist, stated in January that:

> Carbon trading, with its huge government subsidies, is just what the finance industry wanted. It'll make a lot of money for a lot of people and postpone the moment of reckoning.

So he is saying it will make a lot of money for a lot of people in the financial industry.

Carbon markets can also cause huge fluctuations. We can look to Europe as an example and what we saw happen there. In February of this year, the Financial Times wrote an article entitled ''Fall in CO_2 Price a Risk to Green Investment.'' It seems that the price of carbon in the European Union had fallen so low that it no longer provided an incentive to lower the use of carbon.

So those are things happening not just for this country but around the world.

Another problem is the huge economic gamble ACES makes by bypassing cheaper, low-carbon fuels by heavily relying on unreliable expensive energy. This ACES legislation mandates that by 2020 the electric utilities meet 20 percent of their electricity demand through renewable energy sources and energy efficiency. This is the wrong approach. We need an all-of-the-above energy strategy to address our Nation's energy needs. We need to make America's energy as clean as we can, as fast as we can, without raising energy prices for American families. That is how you create and that is how you then sustain economic development. So I would say, let's develop all of our energy sources—wind, solar, geothermal, hydro, clean coal, nuclear, natural gas—all of the energy sources. Our Nation is so blessed with abundant energy resources. They are right here for us to use in a clean and environmentally friendly way. Coal is cheap and abundant in America. It is what is keeping our energy affordable today. Uranium is abundant in America too. Let's develop this proven zero-carbon resource. And, yes, let's develop all of the renewable energies—the wind, the solar, the hydropower. We need it all.

Lisa Jackson, Director of the Environmental Protection Agency, recently took a trip to Wyoming, and this is what she said while she was in my home State of Wyoming:

> As a home of wind, coal, and natural gas, Wyoming is at the heart of America's energy future.

That is because Wyoming has it all. It has the coal, it has the wind, it has the natural resources of natural gas and oil and uranium for nuclear power. It has it all, and we need it all.

The bottom line is that the Democrats' cap-and-tax bill costs jobs and it raises energy prices. I don't understand why we can't make America's energy as clean as we can, as fast as we can, without raising energy prices on American families. The administration wants to take a different approach. Why are the American people being given this stacked deck, where all of the options hurt the economy, raise energy prices, and cost jobs? The President says we need green jobs. I agree. We also need red, white, and blue jobs—American energy, American energy sources.

The reality is, this partisan energy tax bill passing in the House is a bad bet for all of us. We shouldn't double down with any more taxpayer money to bail out the climate through an energy tax.

Madam President, I yield the floor, and I suggest the absence of a quorum.

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

The legislative clerk proceeded to call the roll.

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

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

Mr. ROBERTS. Madam President, I understand we are in morning business, and I ask unanimous consent that I be recognized for about 12 minutes.

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

SUPERFUND IN KANSAS

Mr. ROBERTS. Madam President, I rise today to discuss an issue that is one of these ''believe it or not'' issues of waste and abuse concerning billions of tax dollars and stimulus funding. I have some good news and then I have some bad news to report.

First the good news. In the last 24 hours, we have been able to reverse a policy that would have used stimulus money to pave the same road twice within a matter of months. I said yesterday that did not pass the Kansas commonsense test or, for that matter, any State's commonsense test, and would be a huge abuse of taxpayer dollars. We have reversed this plan, this silly plan, in a bipartisan way.

I wish to personally thank Vice President BIDEN, the man charged with overseeing all of the stimulus spending, for taking action to correct this abuse after I contacted him. I really thank the Vice President because the White House moved and the Vice President moved in an expeditious fashion, and I, quite frankly, didn't expect they could move that fast, but they got the job done.

The Vice President will be in Kansas today, and I asked him to review this rather ridiculous example of wasteful spending occurring in Cherokee County, KS, just a short 2-hour drive south on U.S. Highway 96 from where the Vice President will be. You see, a section of old Highway 96 would have been

resurfaced with stimulus funds. Then portions of an EPA Superfund site would have been cleaned up with stimulus funds, and the heavy equipment used for the cleanup would have damaged the newly resurfaced highway, so they would have to go back in and do the highway again. Once this cleanup was complete, additional stimulus funds would have gone to repair the road damage caused by the heavy trucks. Taxpayers would have paid almost $1 million to fix this road twice.

Fortunately, in working with the Vice President, we now have media reports that the Superfund cleanup will occur prior to any roadwork. That is the good news. Again, I credit the Vice President and his staff and his team.

Now for the bad news. While this spending issue has been fixed, there is a much larger spending issue affecting dozens of Kansas families in Cherokee County, KS, and that is still a major problem. I am going to urge the Vice President to again provide leadership. He is the self-proclaimed new sheriff in town. I am an honorary sheriff of Dodge City, KS, my hometown. So from one sheriff to another, I would simply say to the Vice President: Sheriff, I will ride shotgun or you can ride shotgun. We have the problem only half solved.

You see, in April, EPA Region 7 issued a press release saying Cherokee County would receive up to $25 million from the stimulus. According to the press release:

> By starting or speeding up cleanup at Superfund sites, the [stimulus] funding is also increasing the speed with which these sites are returned to productive use. When a Superfund site is redeveloped, it can offer significant economic benefits to local communities, including future job creation.

Unfortunately, for fewer than 100 residents living in the city of Treece, the stimulus funding for this project is literally going down a sinking hole. The city of Treece, KS, sits on the Kansas-Oklahoma border. This small, rural community was once a world leader in lead and zinc mining, mining that lasted for nearly 100 years. As the mining companies shut down in the 1970s, the groundwater began to rise and the pillars that supported the soil above the mine shafts began to collapse and you had a giant sinkhole. Shortly thereafter—in 1983, to be exact—the EPA placed over 500 square miles in southeast Kansas, northeast Oklahoma, and southwest Missouri on the National Priorities List of the Superfund list, including the city of Treece. In total, Cherokee County, KS, where Treece is located, has 115 square miles in the Superfund Program.

Last summer, during a listening tour of this part of Kansas, I saw firsthand how 100 men and women and children are living in absolute blight. They live day by day not knowing when—and I mean when, not if—their homes will collapse into the earth below into a giant sinkhole. They remain there despite the loss of businesses and infrastructure because their homes have no market value and they cannot sell them to fund a new home or even rent one.

As parts of Cherokee County have been on the Superfund list for the last 26 years, the EPA has removed and replaced contaminated topsoil. According to their stimulus press release, the EPA will continue to remove lead-contaminated residential soil at more than 380 acres in Baxter Springs and Treece. That probably sounds like an admirable thing to do, but as the ground below it caves in, the exposed soil that has not been cleaned up will rise, so essentially this is a never-ending process. You are cleaning up topsoil on a single home, and after the sinkhole sinks, obviously the topsoil is going to be contaminated with the contaminated soil underneath the new topsoil. If you get all that, I think you got the problem. This is a never-ending process.

I have worked very long and hard with other members of the Kansas delegation to determine how best to address this situation. The only satisfactory answer anyone has been able to give me is to relocate the town to protect the residents from a complete cave-in. The Federal Government needs to buy out the land from the remaining homes and business owners and then prohibit any future construction on the property affected by the contamination. This is exactly what we did with Pitcher, OK, on the other side of the State line, just a few years ago. Most estimates indicate we could relocate the entire town with $3 million in Federal funding and $500,000 in State funding—funding the State of Kansas has already set aside. During the previous Congress, I introduced legislation to address the Federal portion of this funding.

Fast forward to today, with an economy experiencing a lot of turbulence and a so-called stimulus bill that everyone in this body heard was an absolute necessity and not only a job maintainer but a job creator. So I asked the EPA to use $3 million of already allocated stimulus funding to relocate the community—$3 million. I was told no.

Instead of solving this problem and relocating the families of Treece to a safe facility, the EPA, with the assistance of the stimulus package, continues to spend even more money, $25 million—eight times the amount needed to relocate the community, the 100 people who live in blight and fear that their homes will sink into a sinkhole—to put new soil—this is what they are currently going to do—onto contaminated soil, which is then going to collapse and recontaminate all the soil. This doesn't make sense.

I have had an ongoing dialog with EPA, and they have told me:

> The wastes are causing great environmental harm to southeast Kansas—

We, of course, knew that—

> as evidenced by the documented impacts to birds, fish, mussels, macro-invertebrates, and horses. There is also evidence of harm to humans as it is related to elevated blood lead levels.

The letter went on to say:

> EPA Region 7 believes the situation at the adjacent Region 6 Tar Creek Superfund site in Oklahoma materially differs from the Cherokee County Superfund site, and that is what drives different decisions for the Tar Creek Site.

I am going to refer to a couple of charts here.

This is a picture of Treece, KS, located right here. You can see all of these white objects here. Basically, that is the chat material that has come out of many mines over 100 years.

Here is Treece, KS, and here is Pitcher, OK. Here is a giant chat pile in between. I have been there. You see many little ponds and winding roads, and I advise you not to go fishing in any of those ponds. You might catch a three-eyed fish. At any rate, it is all contaminated, all a sinkhole, whether it is from Treece, KS, in Region 7 with the EPA or whether it is Pitcher, OK, in Region 6 in Dallas. I don't know what the difference is. If this is contaminated, and it is, and this is contaminated and looks the same, and it is, what the heck is the difference?

Let me show another angle so you can appreciate what I am talking about. This is what the people of Treece see every day as the Sun rises and sets. This is a giant chat mountain—all of this contaminated soil. This side of the chat mountain is Treece, the other side is Oklahoma—the same situation, same problem, same contaminated soil, same sinkhole, and the same thing on the other side, except EPA 7 in Kansas City can't get it through their heads that this is identical to the same problem over here.

Instead of spending $25 million to clean up and put topsoil on contaminated soil that will sink, why can't we spend $3 million to save the community of Treece and relocate these people? Basically, EPA Region 7 does not have a factual basis, according to them, ''that would allow the use of regular or [stimulus] funds for a residential buy-out at the Treece subsite.'' Why? We were going to spend money for a road to be built twice. We are spending $25 million to put topsoil on a sinkhole. Why can't we put $3 million to relocate this town?

Here is my question. EPA acknowledged there is evidence of harm to humans. They listed a whole series of other animals and wildlife, and so on and so forth, that they are worried about. I understand that. But why not provide assistance to relocate fewer than 100 people from harm's way?

Furthermore, EPA told me that ''a 10-year timeframe is estimated for complete waste remediation.'' Due to the continual mine collapses, I wonder if the environmental cleanup will ever be completed.

I think it is in the best interests of all taxpayers to quit throwing money down sinkholes and provide an opportunity for 100 folks who have no other

options to move, as their homes are worth nothing. We do not need to spend, again, $25 million on a problem that will not be solved—topsoil on top of the sinkhole. We need to take care of these people and spend $3 million to let them get on with their lives. While American taxpayers are spending untold millions to prevent mortgage collapses, I can see no better use for the stimulus plan than to get the residents of Treece into safe homes.

I said once before, I am an honorary sheriff of Dodge City. I have a badge. You can go to Dodge City and you can meet the marshal, you can see Miss Kitty. You can go down to the Long Branch. We are used to taking care of problems ourselves. Kansas has appropriated $500,000 to do this. All we are asking for is $3 million, not the $25 million that I don't think is going to ever really result in any long-term cleanup.

You have to be there to realize just how bad this is, the pools of water and all. People will tell you: Senator, we are going to take you around this way. Don't walk this way.

So I would just ask Sheriff Joe, who is the self-declared sheriff on stimulus money, help me out here. Ride sidesaddle or you can drive the stage. Help me get $3 million. You have already stopped the ridiculous situation of building the road twice after we had destroyed it with stimulus money. That is the good news. But the rest of the story is that the citizens of Treece need to be relocated. We can do this for $3 million.

This remains an awful way to treat any community. I think it is not a wise use of taxpayer money. It does not pass the Kansas commonsense smell test.

I yield the floor.

HEALTH CARE

Mr. BENNET. Madam President, I rise today to discuss the urgent need for health care reform. The people of Colorado, and the American people, have waited for too long for Washington to act.

We should begin with a basic principle: if you have coverage and you like it, you can keep it. We will not take that choice away from you.

But even as we keep what works, we must confront the challenges of soaring health care costs and the lack of access to affordable, quality health care. The status quo is unacceptable. Every day, families in Colorado and across America face rising premiums. Their plans offer fewer benefits. They are denied coverage because of preexisting conditions.

And until we fix the health care system, we will not be able to fix the fiscal mess in which we find ourselves.

Since 1970, the share of health care as a part of the GDP has gone from 7 percent to 17 percent. The United States spends over $2 trillion in health care costs, including over $400 billion on Medicare. President Obama has said the biggest threat to our nation's balance sheet is the skyrocketing cost of health care. He is right.

In Colorado, we have not waited on Washington. We have made real progress in showing how you can provide high quality health care at a lower cost. Last week, the New Yorker magazine published an article titled ''The Cost Conundrum'' that highlights the important work that has been done in Mesa County, CO. Over 30 years ago this community serving 120,000 people came together, doctors, nurses, and the nonprofit health insurance company. They agreed upon a system that paid doctors and nurses for seeing patients and producing better quality care. They realized that problems and costs go down when care is more patient-focused.

In Mesa County, the city of Grand Junction implemented an integrated health care system that provides follow-up care with patients. This follow-up care has helped lower hospital readmissions rates in Grand Junction to just 3 percent. Compare that to the 20 percent rate nationwide, and it is clear that our rural community on the Western Slope of Colorado is onto something groundbreaking.

High readmission rates are a large problem for our seniors. Nearly one in five Medicare patients who leave a hospital will be readmitted within the following month, and more than three-quarters of these readmissions are preventable. Rehospitalization costs Medicare over $17 billion annually.

It is painful for patients and families to be caught up in these cycles of treatment. All too often, care is fragmented; you go from the doctor, to the hospital, to a nursing home, back to the hospital and then back to the doctor again. Patients are given medication instructions as they are leaving the hospital, many times after coming off of strong medications. They do not know whom to call, and they are not sure what to ask their primary care doctor.

The solution, both our Denver and Mesa County health communities have found, is to provide patients leaving the hospital with a ''coach.'' This coach is a trained health professional connecting home and the hospital. This coach teaches patients how to manage their health on their own.

Our Denver health community created a model based on this idea called the Care Transitions Intervention. Their work is the basis for the Medicare Care Transitions Act of 2009, a bill I introduced to implement this model on the national level. This legislation recognizes that patient care should not begin in a doctor's office and end at the hospital doors. Investing in coaching and transitional care now can head off huge costs down the road. It has the advantage of being both preventive and responsive.

Take 67-year-old Bill Schoens, from Littleton, CO, who recently suffered a heart attack. Before he was released from the hospital, registered nurse Becky Cline was assigned as his Transitions Coach. She made sure that he understood the medications that his doctors prescribed and everything else he needed to do to get healthy. Bill even pointed out, ''When you are in the emergency room, you are all drugged up and can barely remember what to do. Confusion starts to set in.''

Becky went through each step Bill needed to follow when he left the hospital. Becky evaluated Bill's ability to follow doctor's orders in his environment and helped him maintain his own Personal Health Record. With her help, when Bill visited the doctor, he did not have to remember everything that happened since he left the hospital; it was all in the book.

Bill said, ''When people are in front of their doctor, their blood pressure goes sky high and they forget what they need to ask.'' He said he found the help and guidance he received from his Transitions Coach ''invaluable and lifesaving.''

We need patient-centered coordinated care, care that views nurses, doctors and family members not as isolated caregivers, but as partners on a team whose ultimate goal is to make sure patients get the guidance and care they need. Hospitals are not the problem, primary care physicians are not the problem, and nurses are not the problem. Our fragmented delivery system of care is the problem.

This bill also makes sure that we are teaching patients to manage their own conditions at home.

Sixty-nine-year-old Frank Yanni of Denver, CO, had surgery for a staph infection of the spinal cord. After leaving the hospital, he noticed that the pain he was experiencing weeks after surgery was getting worse. Having been ''coached,'' he identified the problem and knew to insist on visiting his doctor immediately. A hospital test showed that Mr. Yanni required a second surgery. His coach said that, ''Had he let that go for even another week, he could have ended up in the ICU, septic and horribly sick.''

Our Colorado transition of care model, reflected in our legislation, gives health care systems the choice of whether to create this program. But it allows existing patient-centered transitional care programs like the one in Mesa County, CO, to continue on.

We want communities and providers to think and work together to reduce readmission rates, reduce costs and provide better coordinated care to our patients. Other systems should look at Colorado and the systems in 24 States that have already begun to follow this model.

As we begin to emerge from the economic downturn, we must call upon existing health care professionals from all walks of life—nurses, nurse practitioners, social workers, long-term care, and community health workers—to serve as transitional coaches.

Colorado nurses like Becky Cline have found that focusing on transitional care has leveraged their skills,

empowering them to take a more active role with patients. They are able to work with both patients and family caregivers. For too long, family caregivers have been ''silent partners.'' Some 50 million Americans provide care for a chronically ill, disabled or aged loved one. This bill recognizes their importance, connecting them with a coach who can teach them how to properly coordinate at-home care.

This bill is only a small part of the solution to the complex challenges of our fragmented health care system. The problems of rising costs and limited access affect people from all walks of life.

Skip Guarini of Parker, CO, is a self-employed private consultant and retired U.S. Marine. After years of regular doctors' visits, Skip's dentist discovered a lump on his thyroid during a routine exam that had gone undetected by his physician despite 10 previous exams.

Skip underwent a CT/MRI scan, ultrasound, and biopsy, all of which were inconclusive. A second series of tests 6 months later revealed that the lump had grown, and Skip underwent surgery. During the surgery, doctors found cancer. Skip was then sent to an endocrinologist who ordered more tests. All tests came back negative. A second full body scan revealed no sign of cancer anywhere in Skip's body.

All these exams and screenings cost Skip $122,000.

Since then, Skip has maintained perfect health, but he cannot obtain private insurance because of the thyroid surgery. He now relies on COBRA and is paying a monthly premium of $1,300. This coverage is set to expire in less than 1 year, at which point Skip will have no insurance.

Hollis Berendt is a small business owner in Greeley, CO. She is covered through her husband's employer, which is ''a luxury many other small business owners don't have,'' she said.

After graduating from Colorado State University in 2004, their daughter Abby found a job with a large company in New York City. She was told she could not get health care coverage until she had been working for the company 1 year. At 10 months of employment, she was diagnosed with an ovarian tumor that would require surgery. The expenses were too much for Abby, so her parents had to take out a second mortgage to pay her medical bills.

Hollis shared that ''this experience brought to light, all too clearly, how close we all are to losing everything due to a health issue.''

The current system is hurting our small business people and their employees. Take Bob Montoya of Pueblo, CO, who runs Cedar Ridge Landscape in Pueblo with his brother Ron. They are torn between providing health care coverage for employees and keeping the business afloat.

Last year, the business paid out $36,000 for a health care plan to cover Bob and Ron's families and one other employee. The other 12 employees and their families do not get coverage through their work. Bob said, ''As business owners, we want to do right by the people who work for us, but if all our employees opted into our health care plan and paid their 50 percent, we would be forced out of business.''

He said it is an ''impossible situation'' for him and his employees.

Like too many small business owners, Bob can not find good health care coverage at a cost he can afford.

He said, ''The longer it takes to pass comprehensive health care reform, the more jobs will be lost as small businesses shut their doors due to rising costs.''

These Coloradans speak for countless others across the nation. All they ask for is a health care system that works for them, a health care system that does not crush them with unreasonable costs, and a health care system that does not deny them coverage just because they have pre-existing conditions. I am hopeful.

I am hopeful that we can keep what works in our system and fix what is broken. I am hopeful that this Congress, working with our President, will finally deliver on the promise of health care reform. The people of Colorado deserve it. The American people deserve it.

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

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

The assistant legislative clerk proceeded to call the roll.

Mr. NELSON of Florida. 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. NELSON of Florida. Mr. President, I understand we are in morning business. I ask unanimous consent to speak for up to 20 minutes.

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

OFFSHORE DRILLING

Mr. NELSON of Florida. Mr. President, the Senate Energy Committee has just approved an energy bill that adopted a very controversial amendment that would allow oil to be drilled 10 miles off of the coast of Florida.

I wish to refer to this chart. Here is the peninsula of Florida. This is the panhandle of Florida, including Pensacola, Fort Walton Beach, Panama City, and Cape San Blas. Some of our largest military installations in America are here: the Pensacola Naval Air Station, the big complex of the Air Force, Eglin Air Force Base in that area of Fort Walton Beach. Down here in Panama City is Tyndall Air Force Base, where they are training all of the F–22 pilots. As one can see on this map, the rest of the gulf coast of the United States includes Alabama, Mississippi, Louisiana, and then Texas.

This chart illustrates what the Dorgan amendment does to Florida. It shows the western planning area of the gulf, the central planning area, and what is known as the eastern planning area. The chart shows that in legislation we passed in 2006, a compromise was struck whereby the oil industry could drill in an additional 8.3 million acres, in addition to the 33 million acres they have under lease in the central and western gulf—33 million that they have under lease that they had not drilled. We worked out an additional 8.3 million acres in this tan area called lease sale 181. In exchange, the compromise was for the protection of the Gulf of Mexico, everything east of this longitude line known as the military mission line. Why? Because everything east of this line is the largest testing and training area for the U.S. military in the world. It is where we are training our F–22 pilots out of Tyndall Air Force Base, it is where we are training our Navy pilots in Pensacola, and it is where we are testing some of the most sophisticated weapons systems in the world that are under the test and evaluation component of Eglin Air Force Base.

This is the area. It is also where we are training our Navy squadrons at Key West Naval Air Station. They will send in a squadron down here to Key West, and when they lift off from the Boca Chica runway, within 2 minutes they are over protected airspace. So they don't have a lot of travel time. They don't spend a lot of gas getting to their training area, which is out here. So we see that we have this area that is now protected.

I wish to have printed in the RECORD a letter from the Secretary of Defense—and this is actually from the previous Secretary of Defense, Secretary Rumsfeld—in which he says the use of this for oil and gas production would be incompatible with the needs of the U.S. military in this test and training area.

I ask unanimous consent to have this letter printed in the RECORD, if I may.

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

THE SECRETARY OF DEFENSE,
Washington, DC, November 30, 2005.

Hon. JOHN WARNER,
Chairman, Committee on Armed Services, Russell Building, Washington, DC.

DEAR MR. CHAIRMAN: Thank you for your letter of October 7, 2005, concerning the potential effect of Department of Interior-administered oil and gas leasing on military training and readiness in the Eastern Gulf of Mexico. The Department of Defense (DoD) fully supports the national goal of exploration and development of our nation's offshore oil and gas resources. The DoD, the Department of the Interior, and affected states have worked together successfully for many years to ensure unrestricted access to critical military testing and training areas, while also enabling oil and gas exploration in accordance with applicable laws and regulations.

DoD conducts essential military testing and training in many of the 26 Outer Continental Shelf (OCS) planning areas. Prior

analysis and existing agreements with Interior recognize that areas east of the 86° 41′ line in the Gulf of Mexico (commonly know as the ''Military Mission Line'') are especially critical to DoD due to the number and diversity of military testing and training activities conducted there now, and those planned for the future. In those areas east of the Military Mission Line, drilling structures and associated development would be incompatible with military activities, such as missile flights, low-flying drone aircraft, weapons testing, and training.

As the planning process for Interior's new 5-year OCS oil and gas leasing program proceeds, DoD will continue both to evaluate its military requirements and to work with Interior to ensure the 2007–2012 oil and gas program, and any future lease sales resulting from it, strike the proper balance between our nation's energy and national security goals.

Sincerely,

DONALD RUMSFELD.

Mr. NELSON of Florida. Mr. President, here is what people don't understand. The committee that adopted this amendment, 13 to 10, doesn't realize this is the largest testing and training area for the U.S. military. That is why in the legislation in law we protect everything east of that line that we passed 3 years ago. In return, we gave the oil boys an additional 8.3 million acres in lease sale 181 and lease sale 181 south. That, by the way, is in addition to their 33 million acres they have under lease here, and here, as shown on this map, that they have not drilled.

Why do the oil companies want to have this additional lease area when, in fact, they have a lot of leases they haven't drilled—33 million acres plus another 8 million acres? Well, it is because a lease has a legal value. If there is estimated to be any oil or gas there, that has a value, and those leases then become a part of the assets of the company, which increases the value of the company, which, of course, then makes their stock worth more. But what we struck in the compromise 3 years ago that everybody out here on this Senate floor agreed to—agreed to, I might say, with Senator MARTINEZ and me—was in exchange for getting that additional area, they would leave the military mission test and evaluation and training area alone.

In the last round of BRAC, which is the Base Realignment and Closure Commission, the ''r'' of BRAC stands for realignment. Is it any wonder that in that round of evaluating military bases they decided to send all the pilot training for the new stealth fighter—the F–22—that they brought it here to Tyndall Air Force base at Panama City? Why? Because they have that area.

Listen, this fighter does a dog fight at 1.5 Mach, twice what an F–16 and an F–15 does a dog fight at. They are doing a dog fight, doing tight turns at about .75 Mach. The new F–22 stealth fighter will go into and engage another aircraft at 1.5 Mach. When you do turns at twice the speed of an F–15 and F–16, you have a much wider radius of a turn. That is why they need all that area. When they are dropping on targets, they are dropping live ordnance.

When we are testing long-range weapons systems at Eglin Air Force Base—some that we release from airplanes, some that are shot from ships—we need hundreds of miles of range. That is why the operative policy of the Department of Defense is that you can't have oil rigs out here to interfere with national security preparation, but, apparently, that is not the way 13 Members of the Senate Energy Committee understood this argument.

Now there is another argument. By the way, I might point out that in that realignment of the bases, they are bringing into Eglin Air Force base all the pilot training for the new F–35. That is the Joint Strike Fighter that is still being developed, but that will be coming out within the next few years. That is the Joint Strike Fighter for the Navy, the Marines, and the Air Force. That Joint Strike Fighter will be sold to some of our allies.

Where is the pilot training? Right here because of the restrictions, it being a test, a training, and an evaluation area. That is why the U.S. military brought these new assets into this area.

There is another reason now that I get so exercised about this, other than the fact of the agreements that were set, that were agreed to; the compromises that were struck 3 years ago are now being abrogated.

That is, they now bring oil rig leasing within 10 miles of the world's most beautiful beaches. There are not too many Americans who don't know that the beaches running from Pensacola all the way through Panama City to Mexico Beach are some of the world's most beautiful beaches. They are sugary white sand, and people from all over go to enjoy this extraordinary valuable resource. It is God's way of giving us a blessing on Earth that people enjoy when they want to go to the beach.

Can you imagine, what the Energy Committee has passed, allowing oil rigs 10 miles off the world's most beautiful beaches? Environmentally, that is one thing, but let's look at the economy of Florida. The economy of Florida—we are a peninsula. We have more coastline than any other State, save Alaska, but Alaska doesn't have a lot of beaches. We have more beaches than almost—not almost—than any other State. Is it any wonder we want to protect our economy, which is a $60 billion-a-year tourism industry, particularly at a time when the economy is being savaged as much as it is?

Yet the Senate Energy Committee would say they are not only going to ignore the military tests and training range that has been off-limits in the law, but now they are going to run rigs up to 10 miles offshore and threaten those sugary white beaches.

Well, let me tell you a few points about this wise energy policy they have supposedly adopted. We all know increased domestic drilling is not going to decrease U.S. dependence on foreign oil. That has been shown over and over. Why? Because if there was oil there, you are not going to get it into production for 10 years. So using the scare tactics of the gas prices going up and up doesn't do a bit for decreasing U.S. dependence on foreign oil and helping gas prices. But let's say it would. Even though bad oil spills and shipping accidents take place, let's say, for a moment, the technological innovations now have made all drilling operations safe; and if the United States wishes to remain dependent on oil, well, shouldn't we drill anywhere we can find oil? How about Colorado for oil shale? But, oh, no, that is off-limits.

How about the five Great Lakes? They should have plenty of black gold. But, no, that is off-limits. How about the oil-rich Arctic National Wildlife Refuge? That is off-limits. This Senator has supported keeping that off-limits. No, the reality is that, instead, some of my colleagues in the Senate want to come—it is kind of like: don't tax you, don't tax me, go tax that ''fella'' under the tree. They want to go and hit somebody else. They want to cut the heart and the lungs out of the U.S. military testing area. They want to come in and start fouling up the most beautiful beaches in the world, the northwest Florida coast.

Three years ago, we opened that additional 8.3 million acres. We didn't allow any drilling any closer than 100 miles off Pensacola, 125 miles off Panama City, 237 miles off Tampa Bay, and over 300 miles off Naples. Why are some people pushing to change this so soon after that compromise that was struck 3 years ago? It is the oil industry, that is why. The oil industry has those 33 million acres out here in the central and western gulf. It is leased, it is not being drilled, but that is not enough for them. Even though the industry hand-picked areas opened here in the 2006 compromise, it now feels it can make more of a profit by drilling closer to Florida's coast.

I don't think we should have to trash our coastline and our economy and the U.S. military so big oil can increase its profit margin. There are serious national security implications if this were to become law. I wish to show you something else. Look at this picture. This is a beach in Pinellas County, Florida after an oil spill. You know what that is—that is oil mixing with white, sugary, powdery, white sand.

Drilling 10 miles off the coast of Florida would destroy the economy of the Nation's fourth largest State. It would convert Florida's world-class beaches to an industrial coastline. We would trade the world's top beaches and the tourist attractions for an industrial waste line dotted with transmission pipes, storage tanks, and oil rigs. We would take away the U.S. military's last unfettered testing and training range—and take it away during a time of war.

Supporters of opening the eastern gulf say we need to do it to help get America off foreign oil. Tell me, then, why isn't there a clause in the drilling amendment passed specifying that all oil and natural gas that would be produced in the eastern gulf has to stay in the United States for domestic consumption?

But, no, that is not there because, the truth is, any oil that would be drilled could be sent to any other country in the world, reducing our use of foreign oil not by one single drop.

If we wish to reduce our dependence on foreign oil—and you have heard me say this ad infinitum—we need to increase our use of alternative energy, energy-efficient cars and appliances.

Mr. President, is my time coming to a close?

The PRESIDING OFFICER. Yes.

Mr. NELSON of Florida. I ask unanimous consent to proceed for an additional 5 minutes.

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

Mr. NELSON of Florida. Recently, we have seen how gas prices have started to rise. Why? Last year, the price of oil went up to $147 a barrel. Why, in 1 day, did the price of oil rise $37 for a barrel of oil? It is because those greedy speculators on unregulated futures commodities markets had been able to bid up crude oil prices in part due to a legal loophole, called the Enron loophole, which, in effect, unleashed insider trading similar to condo flipping since 2001.

Some Gulf Coast States, such as Louisiana, have embraced drilling. Congress even agreed to prop them up with revenue sharing. But because Louisiana doesn't have beaches—or has beaches that are left such as this one in the picture—and they don't have a tourism economy like Florida's, it isn't worth the risk to the jobs and the revenue and the economy of Florida.

Florida's Gulf Coast has some of the most beautiful beaches in the world. These beaches account for a substantial portion of the $60 billion-a-year tourism economy.

Would you visit a beach with oil operations along its shores? Would you want to go to a beach that looks like this photo? I'll tell you a little more about it. This photo is of a relatively small oil spill that occurred as a result of a shipping accident in Pinellas County, FL, in 1993. It simply doesn't make sense to jeopardize Florida's tourism industry and put the coastline at risk of ending up like this.

I will close by reading a timely editorial that appeared in today's St. Petersburg Times. That is one of Florida's largest newspapers. This was so poignant I think it is worth me inserting it into the RECORD, which I will.

I ask unanimous consent that the entire article be printed in the RECORD.

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

[From the St. Petersburg Times, June 11, 2009]

AGAIN, WITH FEELING: NO NEW DRILLING

There is a rhythm to summer that has become as predictable in Washington as it is predatory and senseless: Schools let out, vacation season begins, gas prices rise and opportunists in Congress—encouraged by Big Oil—cite the pain at the pump to push for expanding offshore drilling, jeopardizing Florida's priceless coastline.

Do any of the 13 members of the Senate Energy and Natural Resources Committee who voted to expand drilling Tuesday realize that the nation is moving in the opposite direction and seeking to reduce reliance on fossil fuels with a cleaner energy policy?

The committee approved an amendment to a Senate energy bill that would allow gas and oil drilling just 45 miles off Florida's west coast and even closer off the Florida Panhandle. It would wipe out a 2006 congressional compromise that bans drilling within 230 miles of Tampa Bay and 100 miles of the Panhandle through 2022. That exclusion zone is a reasonable line of defense. Florida's beaches are vital to the state's status as a world-class tourist destination.

Allowing drilling within 10 miles off the eastern Gulf Coast also would jeopardize an important training area for the Air Force and Navy.

As an energy strategy, the measure makes the Senate look hopelessly out of date. Twenty-eight states, in the absence of leadership in Washington, have set targets for renewable energy production. The purpose of energy legislation in both houses of Congress is to fashion a way to leverage billions of tax dollars to curb emissions of global-warming greenhouse gases, build more fuel-efficient cars and to foster investment in alternative energies.

The drilling amendment is an example of a time-honored tactic of tacking on something distasteful to broadly supported legislation. The bill, which committee members expect to pass today, also unfortunately encourages some Republican state legislators who have unsuccessfully sought to open state waters in the gulf to drilling. If the 2006 federal line falls, there will be no stopping the shortsighted in Tallahassee.

Sen. Bill Nelson, D-Fla., has vowed to filibuster the bill if it comes to that. The state's congressional delegation needs to show united opposition, and House members need to demand Speaker Nancy Pelosi stand by her commitment to the 2006 drill-free zone. Gov. Charlie Crist, who is running to succeed Sen. Mel Martinez, R-Fla., also needs to quit waffling and oppose this. And Defense Secretary Robert Gates should explain the implications for naval training and national security should offshore rigs and their attendant infrastructure spring up along the training ranges for America's military pilots. The energy bill is supposed to chart a new strategy going forward. The Senate is headed backward.

Mr. NELSON of Florida. This is what the article says:

There is a rhythm to summer that has become as predictable in Washington as it is predatory and senseless: Schools let out, vacation season begins, gas prices rise and opportunists in Congress—encouraged by Big Oil—cite the pain at the pump to push for expanding offshore drilling, jeopardizing Florida's priceless coastline.

The St. Petersburg Times editorial continues:

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The committee approved an amendment to a Senate energy bill that would allow gas and oil drilling just 45 miles off Florida's west coast and even closer off the Florida Panhandle. It would wipe out a 2006 congressional compromise that bans drilling. . . .

And it goes on to cite the numbers I told you, basically keeping that eastern area off-limits.

The editorial continues:

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The editorial concludes by saying:

The drilling amendment is an example of a time-honored tactic of tacking on something distasteful to broadly supported legislation.

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I thank the Presiding Officer for her indulgence that I could get this off my chest. I don't want to mess up the Energy bill. It is critical for us. I am supportive of many of its provisions. But I am simply going to have to assert my rights under the Senate rules if they try to bring this as a part of that Energy bill.

The PRESIDING OFFICER (Mrs. HAGAN). The Senator from Minnesota.

Ms. KLOBUCHAR. Madam President, I ask unanimous consent to speak in morning business for up to 15 minutes.

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

HEALTH CARE REFORM

Ms. KLOBUCHAR. Madam President, the time for health care reform is now. We cannot afford to wait any longer. For some time, Peter Orszag, now President Obama's Budget Director, has warned that rising health costs are unsustainable and represent the central fiscal challenge facing the country.

At $2.4 trillion per year, health care spending represents close to 17 percent of the American economy, and it will exceed 20 percent by 2018 if current trends continue. Hospitals and clinics are also providing an estimated $56 billion in uncompensated care. Meanwhile, businesses are squeezed on the bottom line, forced to reduce or drop health coverage for their employees. Without action, costs will continue to rise and waste will proliferate.

We need to make health care affordable for everyone, and we need to reduce the waste and fraud that plagues the current system.

To my colleagues who are conjuring up reasons not to pass reform this year, using scare tactics about nationalized health care and engaging in fear mongering, I say we cannot stay where we are. We cannot stay where we are. They must be getting different mail than I am. I am getting mail, and I am getting people coming up to me all over the State. Even though our State has some of the most affordable health care in the country, people know their money is being spent in other States that are not as efficient. They know health care coverage when the economy is tough is very difficult to come by, and that is what they are coming up to me and talking about. They are not saying let's stay the way we are. They are saying reform this system.

In 2008, employee health premiums increased by 5 percent, two times the rate of inflation, and the annual premium for an employer health plan covering a family of four averaged nearly $12,700.

Families cannot continue to bear the burden of runaway health costs. If we do not act, these costs are going to break the backs of the American people. We must remain committed to enacting a uniquely American solution to our Nation's health care problem. We must keep what works and fix what is broken.

As Congress prepares to take up landmark health care legislation, many in Washington are looking to my State, the State of Minnesota, as a leader. Among them is the President of the United States. President Obama has provided leadership and vision on this issue, and in a recent weekly radio address, he has highlighted how the Mayo Clinic and other innovative health care organizations succeed in providing high-quality care at relatively low cost. As he has said, we should learn from the successes and promote the best practices, not the most expensive ones.

In Minnesota, the Mayo Clinic is not alone. Health partners Park Nicollet and Essensia Health are already among those working to deliver the best health care at the least price. At 92 percent of the State covered by some kind of health care insurance, Minnesota has a strong history making sure the health care system promotes both quality care and access—92 percent coverage.

Minnesota, Washington, Wisconsin, Iowa, Utah, and North Dakota are just a few of the States that can help provide leadership to help Congress and the administration as we work to develop a quality integrated health care system that reduces cost to the taxpayer and improves health care outcomes.

It is no coincidence that as we speak, the President is in Wisconsin, another State that understands to have high-quality care, you do not necessarily have to have high prices. In fact, it is the opposite.

I will distill this cost issue into some understandable language. I grew up watching the Minnesota Vikings. Year after year, our State has waited for the Vikings to win the Super Bowl. We have been to the Super Bowl four times, and we have never won the Super Bowl. All during that same amount of time, the people of our country have been waiting for health care reform. They have been waiting for something to happen to make health care more affordable. The people of this country cannot wait any longer. We might be able to wait on the Vikings; the people cannot wait any longer.

The importance of Minnesota's best practices can be outlined in a game plan for national health care reform with a few key pointers: rewarding quality, not quantity; promoting coordinated, integrated care; and focusing on prevention and disease management.

We are never going to be able to move the ball for that next first down unless we start talking about costs; otherwise, we are simply going to have different people pay for the same expensive health care but not do anything to reduce the cost.

First, our game plan for health care reform to reduce costs is to be sure to keep score. That means measuring outcomes and rewarding providers who deliver quality results. Right now in many places, we are not getting our money's worth from our health care dollars. In Miami, Medicare spends twice as much on the average patient as it does in Minneapolis, even though quality is much better in Minnesota—twice as much.

If we look at this chart, we will see that the areas in dark blue are the higher spending regions of the country. They receive the lion's share of Medicare payments. The light blue areas—States such as Minnesota, Montana, and Iowa—are areas where Medicare spending is low but quality of care is often high.

In a recent New York Times article, some explained these differences in spending as they were trying to explain how can this happen that you have twice the Medicare, twice the taxpayers' dollars for the same kind of medical treatments as you would in another part of the country. Some said it is a difference in cost of living, sicker people, more teaching hospitals. But research shows those factors only explain 18 percent of the variation in spending.

It is no surprise. Most health care is purchased on a fee-for-service basis, so more tests and more surgeries mean more money. Quantity, not quality, pays.

According to research at Dartmouth Medical School, nearly $700 billion per year is wasted on unnecessary or ineffective health care—$700 billion per year. That is 30 percent of total health care spending. So to my colleagues who are fear mongering and saying we should do nothing, I say how about $700 billion, 30 percent of total health care spending that we have the opportunity to change around to benefit the people of this country?

Just look at this fact, if you want to look at quality care. The Mayo Clinic ranked as one of the highest quality institutions in this country. If you look at the last 4 years of the lives of chronically ill patients, some of the most difficult times for people in this country, an independent study from Dartmouth came out after they looked at what the Mayo Clinic did. They have a team of doctors working together with quality ratings incredibly high. Then they looked at what was going on in other regions of the country.

If all the hospitals in this country used the same protocol that Mayo Clinic used in the last 4 years of a patient's life, where the quality rating is incredibly high, we would save $50 billion every 5 years in Medicare spending—$50 billion.

So, no, I don't think the answer is just to throw away health care reform and do a lot of fear mongering. I think the answer is to work together to bring this kind of cost savings to the rest of the country.

There is general consensus that Medicare should reward value, and value consists of both quality and efficiency. However, value is not taken into account when Medicare determines payment for providers.

To begin reining in costs, we need to have all health care providers aiming for high quality, cost-effective results. That is why I plan to introduce legislation with Senator CANTWELL and others that would authorize the U.S. Health and Human Services Secretary to create a value index as part of a formula used to determine Medicare's fee schedule—paying for value. This indexing will help regulate overutilization because those who produce more volume will need to also improve care or the increased volume will negatively impact fees. You have to have those incentives in place in how you do the payments or you are never going to reduce costs.

In adding a value index, my bill would give physicians a financial incentive to maximize quality and value of their services instead of volume. Linking rewards to the outcomes for the entire payment area creates the incentive for physicians and hospitals to

work together to improve quality and efficiency.

I am also interested in the idea that the President has proposed to give increased consideration to recommendations made by the Medicare Payment Advisory Committee, MedPAC, a commission created by a Republican Congress. MedPAC's recommendations for payment reform include bundling, which has potential significant cost savings. Giving the recommendations made by experts increased authority could be a valuable tool to help rein in health care spending and improve quality in a responsible way.

So the first part of our game plan for reducing costs for health care is focusing on value. The second part of the game plan for making health care more affordable is to focus on teamwork.

Understandably, patients like it when their health care providers talk with one another and even work together. This means higher quality care, as well as more efficient care. In too many places, however, patients must struggle against a fragmented delivery system where providers duplicate services and sometimes work at cross-purposes—an x ray here, an x ray there, an expert here, an expert there. It is like a football team with 11 quarterbacks but no wide receivers, no running backs and no offensive line. This does not work in football, and it is not going to work in health care.

The beauty of integrated care systems is that a patient's overall care is managed by a primary care physician in coordination with specialists, nurses, and other care providers as needed. It is one-stop shopping. In our rural communities, critical access hospitals utilize this model and provide quality health care for residents in their community with a team of providers.

To better reward and encourage this collaboration, we also need to have better coordination of care and less incentive to bill Medicare by volume. Increasing the bundling of services in Medicare's payment system has the potential to deliver savings and start encouraging quality, integrated care.

When it comes to improving care, changing who pays a doctor will make no more difference. The lesson of high-quality, efficient States such as Minnesota and Wisconsin is that someone has to be responsible for the care of the patient from start to finish, from one goal line to the other. Bundling will ensure that practice is rewarded.

This is a very interesting chart. It does not look interesting, but it is. A lot of people think the more you pay, the better quality care you get. This was a MedPAC analysis of county level fee-for-service expenditures, a national study.

Do you know what they found? They found that those areas of the country, those counties that had low utilization—in other words, maybe someone called a nurse line or a doctor referred them to one specialist instead of them going to three on their own—they found they had the highest quality care. Why is that? It makes sense. You have one primary doctor who knows exactly what is going on, is checking your charts and can send them to one specialist so mistakes are not make. You go to one specialist who does not know you are taking a certain medication and you are allergic to another. High-quality care with low utilization; lowest quality care with high utilization.

That is probably the opposite of what most people in this country think. But, literally, you get the highest quality care in those parts of the country where you are paying less money.

As I said, if people start to say our area of the country is so expensive, only 18 percent of that difference with the high-quality, low-cost States and the low-quality, high-cost States can be attributed to cost of living.

Research has shown that moving toward a better integrated and coordinated delivery system would save Medicare alone up to $100 billion per year. So if people don't want to talk about reform and they want to make a bunch of fear-mongering statements, let them explain to the American people why we are not going to save $100 billion per year.

Finally, the last game pointer is that the best offense is a good defense. My dad covered football his whole life for the newspaper, and this is what he would always say to me: It works on the football field and it works in health care. It is a lot better for both the patient and the patient's pocketbook if a chronic medical problem can be prevented or managed early to stave off complications and the need for costly care. Right now, physicians are paid to treat diseases, not prevent them. Yet a payment system that encourages prevention and disease management could generate enormous savings because a large portion of health care spending is devoted to treating a relatively small number of people with chronic medical conditions.

Let me give an example of this. This is Health Partners, which is a clinic in Minnesota—all over our State. A lot of patients are members of it. They started looking at how can we do a better job with diabetes. They did this back in the fourth quarter of 2004 compared to the fourth quarter of 2008. You see here an increase in quality for the patients, an increase in percentage of patients with optimal diabetes control, because they put in some practical protocols.

What do you see with costs? You see an actual major decrease in the cost per patient. That is the green line. The yellow line is an increase in the patients with optimal diabetes control, as the doctors determined. The green line is a decrease in cost. The red line is patients with diabetes who had asked that they recommend Health Partners clinics. So even as they saw this dramatic reduction in cost, they were still on the up in terms of recommending using Health Partners clinics. Most people don't like their HMOs very much. They always have reasons to complain. So I think this is amazing that they were able to show this kind of result.

At Park Nicollet in Minnesota, they have implemented a congestive heart failure program with Medicare. In the 3 years since the program began, Park Nicollet has saved nearly $5,000 per patient, per year.

Diabetes, congestive heart disease, and back problems all contribute to the excessive cost and growth in our health care system and cause decreased productivity in our economy. One study found that the most costly 20 percent of Medicare patients in a given year account for 84 percent of total Medicare spending. By contrast, the least costly 40 percent of Medicare patients accounted for just 1 percent of overall spending. As the examples from Minnesota and other places demonstrate, effectively managing these and other chronic illnesses is essential to health care reform.

A recent New Yorker magazine article showcased the Mayo Clinic in the context of health care's cost conundrum.

Madam President, I ask unanimous consent for 3 more minutes.

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

Ms. KLOBUCHAR. According to the author, a physician, we are in ''a battle for the soul of American medicine.'' On one side is a fragmented, volume-driven model that too often crosses into profiteering. There are good parts about our health care system, believe me. I know this because I live in Minnesota. We have to maintain those. But we have to fix this broken cost structure. On the other side, you see this model offered by Mayo and other peer institutions across the country where doctors collaborate to provide the best, most efficient care for their patients.

On one side is more of the same, which is both financially and morally unsustainable; on the other side is a new direction that promises to curb cost while expanding affordable coverage. It is time to choose sides. For the sake of our fiscal health and for the sake of millions of Americans struggling to afford the care they need, I urge my colleagues to choose the latter.

Yesterday, I met with a bipartisan group of Senators, and I have to tell you I still have hope that we are going to get this done and I have hope that there will be bipartisan support for this. What I am talking about today—cost reduction, putting these incentives in place—isn't a Democratic issue or a Republican issue. It is an American issue. This is an American cause, and we can find a uniquely American solution to this problem so that we can reduce costs and make health care better quality. I can tell you, having spent my entire life in the State of Minnesota and having a daughter who was

born very sick, who couldn't even swallow when she was born, I know we can get high-quality health care at lower cost. They do it every day in my State, and we can do it in the rest of the country.

Madam President, I yield the floor.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. KYL. Madam President, when it comes to health care, Republicans want reform that respects patient freedom and choice. We want to maintain the sanctity of the doctor-patient relationship. We believe doctors, not Washington, should tailor an individual's care. Washington-run health care would delay or deny care and would displace millions of Americans who are happy with their current health insurance. Federal bureaucracies are not known for being efficient, innovative, or hassle-free.

On Wednesday, the majority whip said:

> Those who come to the floor of the Senate defending the health insurance companies and saying they want no change in the health care system have to defend the indefensible.

Well, who exactly has come to the floor and said that? Who in the Senate has come to the floor and said they want no change? I know of no one who has done that. This is a straw man argument, usually made when you can't win an argument on the merits, but it has become a familiar refrain from some of our friends on the other side of the aisle. They present a false choice between doing what they want and doing nothing. When they don't want to listen to Republican ideas, they accuse us of wanting to do nothing. It happened with the stimulus bill, and it is happening now with health care.

Republicans want health care reform. I have said this repeatedly, and so has Senator MCCONNELL. I have noted that there are abundant problems in our current system, that a routine visit to the doctor can be surprisingly expensive. Too many people have to go without basic care for a host of reasons, whether they are unemployed or work for a business that doesn't have health care or perhaps have a preexisting condition.

The task before us is to ensure that all Americans have access to quality health care without degrading the quality of care for anyone. In other words, those who are happy with their care—and that is the majority of Americans—don't want to have to sacrifice their care in order to take care of the problem of those who are having issues. And by access to care, I don't mean access to a government waiting list.

There are two ways to approach health care reform while trying to keep costs in line. One, which President Obama says he rejects, is to create a competitive marketplace in which consumers get to pick the plan that works the best for their families. Competition helps the consumer. The more competition, the better. And this concept does not include a Washington-run plan.

The other is for the government to ration care by deciding what treatments you can get and which medications you can have. Yes, you can cut costs this way, but it is not right, it is not what Americans want, nor is it what physicians want. The American Medical Association, an organization of 250,000 of America's physicians, said in a recent statement that it does not ''. . . believe that creating a public health insurance option for nondisabled individuals under the age of 65 is the best way to expand health insurance coverage and lower costs.'' I agree. The doctors—those who provide the care—are concerned about what a Washington-run health care would mean for their patients and for the uninsured Americans who need to get in to see them.

Republicans have been discussing the state of health care in Canada and the United Kingdom because those countries have government-run health care and they delay or deny treatment for many of their citizens in order to keep costs under control. The Canadian and British Governments created these systems with the best of intentions, but government-run care is not serving their citizens' needs, and we don't need to replicate their problems here in the United States. In fact, in Canada, Claude Castonguay, chair of the commission which recommended that Quebec establish a government-run system in the 1960s, declared last year that ''the system is in crisis''—his words. Private clinics are opening all over Canada at the rate of one per week to treat those who are on waiting lists at the public hospitals. Many Canadians who have the resources to get out of the bureaucratic government have chosen to do so.

As the Republican leader pointed out today, Britain's National Institute for Health and Clinical Excellence—the entity responsible for setting guidelines on pharmaceuticals and treatments for British patients—last year denied patients in that country access to four kidney cancer drugs that have the potential to elongate patients' lives. The institute explained it this way:

> Although these treatments are clinically effective, regrettably, the cost is such that they are not a cost-effective use of resources.

A chilling statement, indeed. The stories of patients being denied treatment by their governments are real.

President Obama and some of my colleagues in the Senate have argued—as the majority whip has—that a public or a government-run option can compete with other insurers and that this government-run option would be only one choice of many. My question is, Why is it needed?

And what will it do? Government-run health care would crowd out other insurers, quickly becoming a monopoly. I have cited these statistics from the Lewin Group, which has made this point. Someone who has insurance through his or her company could be forced into the government's plan if the employer decides it is simpler and cheaper to pay a fine to the government and eliminate its coverage. A company might say: Why bother with the paperwork and administration when we can just pay a fine and tell people to get onto the government insurance rolls? As I said, that is what health experts say will happen. The Lewin Group I cited before has estimated that 119 million people will be shifted from a private plan onto a government plan if it is created. That would affect two-thirds of the 170 million Americans who currently have private insurance, all but ending private insurance in America.

President Obama said recently:

> If we don't get this done this year we're not going to get it done.

Well, why is that? Why does that have to be so? Could it be because the President would prefer that we rush a bill through before Americans get a chance to absorb what Washington-run health care would mean for their families? If this is worth doing, it is worth doing right. It is worth taking the time to do it right.

Americans are compassionate, and we want coverage for our neighbors just as much as we want it for our own families. But I will tell you that my constituents worry about the cost, and they do not want the Federal Government to cover others at their expense, both in cost and in the form of rationed care. So one of the first questions for this program is, How much is it going to cost and who is going to pay it? Another question is, What is going to be the effect on seniors who are in Medicare? Do they have anything to worry about? And my answer to that is, absolutely, because some of the conversation has to do with ''reforming the way our seniors get their health care.''

We haven't heard much about the exact price of government-run health care, but we know the cost will be extremely high. And whatever we spend, it won't be enough to ensure all Americans get the care they need. So when we begin talking about cost and being more concerned about the cost than the quality of care, as was the institute in Britain I just quoted, then we get into a situation where we are going to have to ration care, and that is something neither our seniors nor families with coverage today want at all.

We need a real marketplace of options. Choice, freedom, and competition should be guiding principles for the health care reform we all want.

I reiterate that Republicans as well as Democrats want reforms in our health care system. There are people who need coverage, and we all understand there are ways we can save money. The question is, Do we do this through more government control, more government bureaucracy, government-run insurance companies, fines on employers, and raising taxes in order to add 40 or 50 million more people to insurance rolls or do we try to

achieve the results through removing barriers to competition which currently exist?

Republicans have noted a whole series of laws right now that could either be reformed or repealed in order to allow more competition, in order to reduce prices for those already in the market and give patients more choice. I don't know why the resistance to this insurance reform. I don't know of anybody who likes the way insurance companies always do their business. I know I don't. So why not reform and enable those who would do it the way people want to have products that could be offered to the public and which presumably the public would buy if they are concerned about the way their insurance is currently being offered?

So this is not a matter of one side wanting reform and the other side not; it is a matter of different approaches. And from my constituents, I can tell you they are concerned about what they have and they are concerned about what they are going to have to pay. As much as they want to help other people have the same kind of coverage they do, they don't want it at the expense of their families, by having care rationed to them and their families as a result of the fact that it would cost more money than we are currently paying.

Madam President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. BROWN. Madam President, I ask unanimous consent the order for the quorum call be rescinded.

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

JOB LOSS CRISIS

Mr. BROWN. Madam President, in my State of Ohio and States such as Michigan, Indiana, Pennsylvania, middle-class families already hit by a terrible recession are facing a new wave of devastating job losses and plant closings. Some 400,000 Ohioans are employed, directly or indirectly, because of the auto industry. The auto industry crisis is a crisis especially in my State and in Michigan and in the other States in the region.

As Congress works to help the industry through these most difficult times, the industry must do all it can to keep jobs here at home. That is why it was welcome news when GM announced that rather than start more small car production in China and Mexico, which they have done in the past, they would open a new small car manufacturing plant somewhere in one of these auto States.

This crisis has hit home in my State, especially in Mansfield, where GM has one of its best stamping plants. Workers at this plant were asked to make concessions over the past 2 years, and they did. They were asked to produce in an exceptionally efficient manner, and they now rank at or near the top, across a range of performance standards. The Mansfield GM Fisher Body Stamping Plant played by the rules, did all that was expected of them, and they made it to the top, literally to the top of GM's stamping plants. Yet GM has decided to close this facility.

GM's decision not to include the Mansfield stamping plant in the New GM, this new coming-out-of-bankruptcy company, one that is focused on building fuel-efficient cars for the 21st century, is troubling, it is more than troubling to employees and members of the Mansfield community and to me.

Yesterday, I met with GM officials who were direct and polite and are trying to do their best. I met with GM officials to try to understand their decision. I am not convinced this makes sense for the New GM, to close this Mansfield Fisher Body Stamping Plant. I know it does not make sense for Ohio. GM's own scorecard shows the Mansfield plant has met nearly 100 percent of its targets and has a productivity rate of 94 percent. According to GM's records, it is the single highest ranked stamping plant in GM.

The plant that is a very close second is 70 miles away, north of Mansfield, in Parma, OH. By GM's own records, those are the two top-rated stamping plants. It makes little sense to me and to the town and GM workers at Mansfield that the company would not want its best and brightest to embark on its new path toward success.

The auto crisis hit home in Twinsburg, OH. Twinsburg is the home of the most modern stamping plant in Chrysler's network. It ranks among the highest in safety and productivity. Yet Twinsburg's workers and their families got the rug pulled out from under them last month. The crisis is playing itself out every day as auto suppliers struggle to find credit.

So it is not just Mansfield and Twinsburg, it is not just the loss of fewer than 100, but 80 or 90 people in families in the Columbus area who lost jobs when a GM supply center announced it was closing. It is also what happens to those companies that supply the auto companies, and they, frankly, employ more workers than the auto companies themselves do.

The crisis plays itself out every single day as auto suppliers struggle to find credit. If a manufacturer has auto customers, banks seem to put them on a black list and do not want to extend any loans, even those backed by the Small Business Administration.

The crisis plays itself out in Warren and Dayton, where Delphi salaried workers, who played by the rules, are left without the pensions they deserve. These stories from Mansfield, from Twinsburg, from Warren, from Dayton, from smaller communities are, unfortunately, not unique. There are more stories, stories from small Ohio towns such as Trotwood, near Dayton; Van Wert, on the Indiana border; and Greenwood and from other cities across Ohio and the Midwest.

That is why it angered me when I sat in the Banking Committee as I was chairing, as Chairman DODD was working on health care issues, when I heard these restructuring proposals for Chrysler and GM portrayed by my more conservative colleagues in this body as ''giveaways'' to workers. When they label this as ''everybody sacrificed except the workers,'' the workers have seen tens of thousands of lost jobs. We have seen a $7-an-hour cut in compensation for these workers. That is a $14,000 a year hit that these workers are taking. They are far from giveaways.

American autoworkers, their families, and their communities are all in this together and have suffered with their communities perhaps more than anybody.

Just 3 years ago there were a quarter million members of the UAW. After these GM and Chrysler restructurings in the auto industry, that number of worker members will be below 100,000. These are men and women who make up our Nation's middle class, the heartbeat of America, if you will.

They work hard, they support their families. They are watching as their chance at the American dream goes up in smoke. It is an American tragedy. Anyone who dismisses it otherwise should be ashamed.

Wages have decreased for entry-level workers. Wages have been frozen. Key health care benefits were eliminated for both active and retired workers. Understand, the much maligned legacy costs that companies are burdened with, if you will, these legacy costs, health care and pensions, were negotiated at the bargaining table when workers said: We will take less money in salary and wages today if you put that money aside for pensions and health care—for health care now and for pensions later. So they gave up dollars at the bargaining table. That is what these legacy costs are.

These concessions, combined with swapping GM's contributions owed to the VEBA with stock, a step that will increase risks for retirees, will save General Motors billions. That is a good idea because we want this company to survive and thrive.

Every facet of this restructuring has an impact on hard-working Americans, on their communities, their States, their Nation as a whole. We should ask yourselves this: Is the government doing everything it can to protect and create American jobs? Is the government ensuring that top-performing segments of Chrysler and GM are not sacrificed because of expediency or politics or information gaps or favoritism?

I held a conference call with mayors from Ohio's auto communities recently. Nearly all of them raised the fact that they may need to eliminate police and fire and their other local government entities, eliminating teaching positions and others, because

of the shortfall in tax revenue from plant closings. Some mayors have already done that.

The worry from these mayors reminds us we are talking more about jobs and bottom line. We are talking about our Nation's manufacturing future. We are talking about our Nation's middle class.

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

The PRESIDING OFFICER (Mr. UDALL of New Mexico.) The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. CASEY. 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. CASEY. Mr. President, I ask unanimous consent to be permitted to speak for up to 15 minutes.

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

HEALTH CARE

Mr. CASEY. Mr. President, I rise this afternoon to speak of a subject that is on the minds of so many Americans. It is also the subject of a lot of attention and work here in Washington, and that issue is health care. I won't try today to cover every aspect of it and to cover all of the details that are being debated here in Washington, but I rise to begin a series of speeches that I and others will be giving on this topic.

I don't think I need to recite the challenge the people of Pennsylvania and America face when it comes to their health care. I do believe there is some consensus, not only here in Washington but around the country, about what we have to do. We have to take action, and as we take action, we have to be very clear about what we tell people and what is in the legislation: that if you like the health care you have, you can keep it; if you don't like what you have or you don't have any health care, we are going to put a bill in front of the American people—in front of the Senate and the House, and then legislation before the American people—which will allow that kind of choice.

I believe there is consensus about that. There is consensus about some fundamental keys to reform. No. 1 is the question of cost reduction. We can't get through this process and not get a handle on costs, especially for the future. No. 2: I think there is a great consensus about choice, preserving the kinds of choices people have now and in fact enhancing the choices that people have in their health care decisions. No. 3: To ensure quality, affordable health care for all Americans. The nature of that issue is that we can build on our current system, but that we have too many people—as many as almost 50 million—who are uninsured.

There are a lot of people to thank here in Washington for the work that has been done already. I know we are a long way off. We have a lot more to do. There are weeks and weeks of work still ahead of us, but a few bear mentioning. Obviously, the President of the United States, President Obama, has made this a central issue of his Presidency and has worked very hard and has continued to make this a priority. We want to commend his leadership. It is essential. We cannot move this legislation without his help.

Senator KENNEDY, who has worked on this issue for more than four decades, I guess, now, has given tremendous leadership and inspiration. Whether he is here physically or whether he is not, he is providing that and has provided that for the American people for a generation on health care.

Senator BAUCUS, the head of the Finance Committee, has worked not just months but years on this. Especially in the last year, in the last 6 months, he has been working very hard to get it right on that essential committee.

Senator DODD has stepped into the Health, Education, Labor and Pensions Committee leadership role because Senator KENNEDY hasn't always been able to be here because of his own health challenges.

I also wish to commend the bipartisan spirit that I think is evident on both sides of the aisle. People want to get this done, and they want to get it done in a bipartisan manner.

What I will speak about today is an aspect of this challenge which I think is not getting enough attention and enough focus and, therefore, may not get enough resolution in the legislation, and that is the issue of what happens to our children, especially children who are poor or those with disabilities, those with special needs. I believe the theme—not just the theme and not just the goal but the ironclad promise that we should make when we talk about reforming health care and getting legislation passed—the ironclad promise should be as follows: No child worse off. No child in America should be worse off at the end of this process, especially poor children and especially those who have special needs, those with a disability.

Despite all of the great work—and I could cite a long list of people to thank for children's health insurance—the legislation that was passed in the 1990s and the reauthorization is great news: 6 million kids covered, plus 4 million more who will be covered, so almost 10 million—almost 11 million, actually—more than 10 million children are covered by that. That is wonderful. We should be happy about that. We got that done this year. Here is the problem: There are still 5 million more who are not covered. So I rise today to speak about coverage and a focus on those children.

Here is what I believe when it comes to children in our society. I believe every child born in America is born with a light inside them. For some children, the reach of that light will be boundless. It will be scintillating. You won't be able to see it, it will be so bright, because of that child's potential or because of his or her circumstances, but their potential and, therefore, the light within them is boundless. For some other children, that light will be a little more limited because of circumstance, or because of other limitations they may have. No matter what the situation that child is in, no matter how brightly or not so brightly that light is shining, we have to make sure we are there for them, especially when it comes to health care. So I believe that light has to continue to shine, and one of the reasons I am so grateful for the work that has been done already is that in our committee, we have made children a priority.

The Health, Education, Labor and Pensions Committee has not only produced a bill already—it is from one side of the aisle, the Democratic side; we are working with our Republican colleagues now—but the Affordable Health Choices Act is now on the table for debate. We are working on it today, hours and hours yesterday and today, and we will continue that with our Republican colleagues.

There are a number of provisions in there for children that speak directly to this concern I have. Senator DODD has shown tremendous leadership on this issue of helping our children through this legislation. But I believe we have to focus the attention of the country on the challenge, and that is why I have introduced S. Res. 170.

I ask unanimous consent that the entire resolution be printed in the RECORD as a part of my remarks.

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

S. RES. 170

Whereas Medicaid is a cornerstone of the Nation's health care infrastructure, providing critical health coverage to Americans who have the greatest needs: children and adults whose financial means are very modest and people who are in poorer health compared to the population at-large, including individuals with significant disabilities and those with multiple chronic illnesses;

Whereas Medicaid provides health coverage to ¼ of the Nation's children and more than ½ of all low-income children;

Whereas because minority children are more likely to be from low-income families, Medicaid has been shown to reduce racial and ethnic disparities in health care, as it provides coverage for 2 out of every 5 African-American and Hispanic children;

Whereas by limiting cost-sharing and premiums, Medicaid provides a comprehensive benefit package and ensures that children have access to affordable coverage and the health care services they need to stay healthy and meet developmental milestones;

Whereas Medicaid is designed to meet the complex health care needs of low-income and special needs children by including a wide range of essential and comprehensive services that many private insurers do not cover;

Whereas Medicaid provides developmental assessments for infants and young children (including well-child visits, vision and hearing services, and access to a wide range of therapies to manage developmental disorders and chronic illnesses) and coverage for in-home support, long-term care for special needs children, and transportation services;

Whereas Medicaid provides a care coordination benefit that supports at-risk children by coordinating State health services, thereby furthering the ability of States to effectively coordinate medical and social services that are provided by multiple organizations and agencies;

Whereas administrative spending is lower in Medicaid than through private insurance;

Whereas Medicaid is critical for ensuring that children have access to safety-net providers in their local communities and for training health care professionals, including pediatricians; and

Whereas Medicaid provides low-income children with the full complement of services they need to meet their unique health and developmental needs: Now, therefore, be it

Resolved, That it is the sense of the Senate that—

(1) Congress should ensure that reform of our Nation's health care system shall benefit all children and that no child shall be worse off, particularly the most vulnerable low-income children and children with disabilities; and

(2) strengthening our Nation's Medicaid program should be a priority and that low-income children should not be moved into a health care exchange system that could disrupt and diminish their benefits, cost-sharing protections, availability of care standards and protections, and access to supports, services, and safety-net providers.

Mr. CASEY. S. Res. 170 is cosponsored by Senators DODD, ROCKEFELLER, BROWN, WHITEHOUSE, and SANDERS. I will highlight some of the features of it.

First, it starts with a recognition that the Medicaid Program is a cornerstone of the Nation's health insurance infrastructure. It notes in the resolution that Medicaid covers a quarter of all children in the country—one-quarter—and half of all poor children. It notes as well that Medicaid has been shown to reduce racial and ethnic disparities in health care and provides coverage for two out of every five African-American and Hispanic children.

Medicaid is a comprehensive benefit package. It provides developmental assessments for infants and young children. It has care coordination benefits in support of at-risk children, and Medicaid's administrative spending is lower than that through private insurance.

Here is the end of the resolution, and I am summarizing here: It is the intent of this resolution to say that the Nation's health care system shall benefit all children—all children—and that no child shall be worse off at the end of this debate. Low-income children should not be moved into a health care exchange system that could disrupt and diminish their benefits. That is S. Res. 170.

I believe it is critically important to emphasize this idea, that no child should be worse off as a result of health care reform—not a single child—and in particular, those who have special needs or who happen to be poor.

We know from our research that children are not small adults. They have different challenges. They have developmental and health care needs that are very different from adults. The challenges they have, the problems they encounter can be exacerbated if children face economic challenges or have any kind of special needs. These needs must be met, and if they are not met, the whole trajectory for the future of that child will be changed for the worse.

Let me say in conclusion, we have seen throughout our history that there are some people who cannot do something on their own, that they need the help of a program, they need the help of a government, and thank goodness we made the determination a long time ago that our health care system is part of that equation. When I think about health care and when we think about the health care of children, no matter what income level their family happens to be in, but especially if they are poor or have special needs, and you think of the love of a mother, with the kind of love that a mother provides to a child, there are so many things that one mother can provide for her child. She can help with that child's education. She can provide nurturing and care and love to make sure that child develops in the way we would hope. She can even help somewhat in that child's health care. But no matter how much a mother loves her child, no matter how skilled she is, no matter how dedicated she is to the welfare of her child, and no matter how much she loves that child, she cannot—cannot—provide the kind of protections that health insurance provides and the kind of medical attention that a good hospital or a good doctor or a good health care professional can provide.

So we have a choice. We can have health reform legislation, and everyone will pat each other on the back and we will all be happy we got it done. That would be wonderful. But if we get this bill passed and we have fallen short with regard to our children, especially those who are poor and have special needs, I think we will have failed not only those children, of course, but we will have failed the obligation we have to make sure that every child comes through this with the kind of protections and the kind of help they should have a right to expect, and that that mother can have a sense that this country, this government has made a full commitment—not a partial commitment but a full commitment—to children.

Let us, as we go forward, remember the love that a mother has for her child and the limitations—no matter how much that mother loves that child and what she is able to do—that we must help her with in this debate. Let us not forget, and let us make sure that the legislation we pass on health care reform has as one of its ironclad promises: no child worse off.

Mr. President, I yield the floor and would note the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. DODD. 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. DODD. Mr. President, what is the business before the Senate?

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

FAMILY SMOKING PREVENTION AND TOBACCO CONTROL ACT

The PRESIDING OFFICER. Under the previous order, the Senate will resume consideration of H.R. 1256, which the clerk will report.

The bill clerk read as follows:

A bill (H.R. 1256) to protect the public health by providing the Food and Drug Administration with certain authority to regulate tobacco products, to amend title 5, United States Code, to make certain modifications in the Thrift Savings Plan, the Civil Service Retirement System, and the Federal Employees' Retirement System, and for other purposes.

The PRESIDING OFFICER. Under the previous order, the time until 2:30 p.m. will be equally divided and controlled between the Senator from Connecticut, Mr. DODD, and the Senator from Wyoming, Mr. ENZI, or their designees.

Mr. DODD. Mr. President, I see my friend from Ohio, Senator BROWN, who has been a champion of this issue, not only as a Member of this body but as a former Member of the other body. He has spoken eloquently on this already. I will defer to him whatever time he may wish to use. I am told Senator ENZI will be here shortly. We will go back and forth between now and 2:30.

The PRESIDING OFFICER. The Senator from Ohio is recognized.

Mr. BROWN. I thank the Senator.

Mr. President, I have watched with great admiration Senator DODD's work on this bill. I also worked on this bill with HENRY WAXMAN in the House of Representatives. Senators KENNEDY, DODD, DURBIN, and Congressman WAXMAN have helped to bring these issues forward, and they have never given up.

I boil this issue down to basically almost one sentence. I remember sitting in front of the Health Subcommittee in the House years ago and seeing the tobacco company executives swear to tell the truth, and they didn't exactly tell the truth when they talked about nicotine not being an addiction. I learned one simple concept at that hearing—and we have known this for a number of years—which is that 400,000 Americans die every year from tobacco-related illnesses. On average, that means more than 1,000 Americans die every day from tobacco-related illnesses.

If you are a tobacco executive, you think about this: You have lost 400,000 customers every year, more than a thousand customers every day, and you

need to replenish your customer base. What do you do? You need to find 400,000 new customers every year. You don't go to people of Senator DODD's and my generation; you don't even go to my children's age group; they are in their late twenties. You aim your marketing campaign at the young men and women sitting in front of me, the pages on the steps in front of the Presiding Officer's chair. You aim at people 14, 15, 16, 17, 18 years old. You have to find 400,000 new customers every year and more than 1,000 customers every day. And they are pretty successful at it.

I heard Senator DODD talk a few minutes ago in another meeting, and he said something like 3,000 new young people start smoking every day. Of those 3,000, for many it becomes a lifelong habit and many will die as a result of smoking. So the key point about this legislation—what makes the legislation Chairman DODD brought forward today so important—is to have the FDA finally be involved in tobacco-related illness and regulation. What makes it so important is we need somebody to stand between the very well-paid drug company marketing executives and these 13-, 14-, 15-, and 16-year-olds who aren't nearly as sophisticated. We need some assistance in making sure those targeting efforts cannot get those young people addicted.

One thousand Americans every day die from tobacco-related illnesses. They need 1,000 new customers every day to replenish their customer base. This legislation will help stop that. That is why this is important, and the Senate needs to pass this legislation. That is why this 15-year effort to do this right finally is coming to fruition. We need to pass this and get it to the President. He is eager to sign it. It will matter greatly in affecting America's public health in the decades ahead.

I yield the floor.

The PRESIDING OFFICER. The Senator from Connecticut is recognized.

Mr. DODD. I thank my colleague from Ohio for his remarks and for his efforts over the years. This has been a long journey. It goes back 50 years. Back then, the Surgeon General of the United States warned of the health effects of smoking—a half century ago.

I know we will have a big vote at 2:30, and that is great news. Sometimes a large vote such as this minimizes the impact of the decision. This has been a very long battle. Somebody told me the other day the issue to ban smoking on airplanes only passed the Congress by one vote. Imagine today if somebody tried to restore the right, or privilege, to smoke on airplanes. I doubt you would find one vote in favor. Even smokers object to smoking on airplanes today. So only by a one-vote margin did Congress vote to ban that practice.

On Monday, we had a cloture vote. People can vote for a lot of different reasons. I don't suggest that everybody who voted against cloture was in favor of continuing to allow the tobacco industry to be unregulated. But by a 1-vote margin, basically, 61 votes, on a bipartisan basis, we terminated that debate, which is bringing us to the vote in 20 minutes. While it may seem like another vote on this day, June 11, 2009, it is a significant vote. I don't know of another vote in the last number of years as important as this one. We are going to start a markup in the next week—my friend from Wyoming has been involved in this and is passionate about the issue of smoking. We are going to mark up bills and fashion a major health care reform debate in this country. What better way to begin that debate than by the vote we are going to take in a few minutes.

For the first time in the history of our country, we will insist that tobacco products be regulated by the FDA. To put this into perspective, the FDA regulates not only all the food and other products we ingest, it regulates cosmetics, mascara, lipstick, and all sorts of products that we not only ingest but that we also use on our bodies. It also controls the products your pets consume, such as cat food, dog food, hamsters, and whatever else; the FDA has the power to regulate that.

But for 50 years, the tobacco industry has successfully fought the ability to regulate tobacco products. Yet 3,000 to 4,000 kids start smoking every day in this country; 400,000 a year die, as you have heard from Senator BROWN. It is incredible to me that for more years than many want to believe or count, we have had an industry that has gone basically unregulated. Of course, the idea that you can put cherry flavors and strawberry flavors in a cigarette and use cartoon figures to market it, that is not aimed at the 30- and 40-year-old tobacco user, it is aimed at children. One thousand of those children become addicted every day, and one-third that number will die prematurely from smoking.

I will guarantee you there is not an adult smoker who wishes their child would begin smoking. I guarantee you that virtually 100 percent of adult smokers have many wishes for their children and one is that their children never start the habit that they did. We are told by health officials, experts, that the average person who smokes and tries to quit, tries seven times before effectively kicking the habit. I am a former smoker. Let me tell you, it is hard. I know others have not smoked, and my colleague from Wyoming talks about his own family smoking. He never did, but he grew up in a family that did. My mother smoked cigarettes and my father smoked cigars and pipes in our house with six children. Many of my siblings smoked growing up, all of whom have stopped. But it is hard.

Today, in the name of my colleague from Massachusetts, Senator KENNEDY, who for four decades championed this, as well as HENRY WAXMAN in the House, DICK DURBIN of Illinois, SHERROD BROWN of Ohio, MIKE ENZI of Wyoming, and many others who have fought this battle, we will vote at 2:30. It will go through overwhelmingly, and we will go on to the next matter.

Our leader, HARRY REID, insisted we stay on this matter. That is leadership. He could have easily said let's move on to another issue, it is taking too long—3 weeks to get it done. But because HARRY REID and DICK DURBIN and MIKE ENZI stayed with us and insisted we go through a normal process, which is right to do in our committee, with the good staff people who have worked hard on this, we are going to get this done today. We might move on to the next issue then.

For the first time, we will make a difference by requiring that the FDA regulate the production, the sale, and the marketing of these products. That is history. I cannot tell you how proud I am to be involved in it, in the name of TED KENNEDY and the others who came before us, including Mike DeWine of Ohio, Tom Davis, HENRY WAXMAN and many others and the thousands of organizations that joined us in this effort today.

Mr. DURBIN. Will the Senator yield?

Mr. DODD. Yes.

Mr. DURBIN. I thank the Senator from Connecticut for his leadership on this issue. Just a few weeks ago, he had the legislation on credit card reform.

I thank Senator ENZI for making this a true bipartisan effort. We would not be here today without his cooperative effort.

I thank Senator DODD for invoking the name of our great hero, TED KENNEDY, who started this fight.

In just a few minutes, this Senate will make a historic decision, and I think it will make the right decision. Joe Camel will be given a life sentence and put away forever, and we are going to give our kids and families across America a fighting chance for a better life.

This bill is historic. It has been a long time coming. I thank my colleagues for all their work to make it possible.

Mr. DODD. I yield the floor.

The PRESIDING OFFICER. The Senator from Wyoming.

Mr. ENZI. Mr. President, I rise today in support of the Family Smoking Prevention and Tobacco Control Act. I have thought long and hard about this legislation, and after a lot of work and a few good improvements, I believe this bill is the only bill we will consider seriously that will make it difficult for kids to get tobacco, make it difficult for them to start smoking, and that is the important point.

I want to be clear, I still do not think there is enough in this bill to stop smoking. One smoker is too many. But maintaining the current state of tobacco regulations is not acceptable to me.

One issue we have not discussed much is the cost of tobacco use to nonsmokers. Many smokers say it is their business what they put into their bodies. Ordinarily, they would be right.

But when it comes to tobacco, we all pay for what smokers put into their bodies and breathe out into the air. We all bear the increased financial costs of the diminished health of smokers. When one of your colleagues smokes, health insurance premiums go up for everybody. Every senior who uses tobacco creates a further strain on Medicare, and since you pay for that, too, through your taxes, it puts a strain on your wallet.

If smokers were the only ones who paid the price for smoking, we would not be having this debate at all. But since the extra costs get shifted to the rest of us, it becomes our problem too. Secondhand smoke penalizes those who do not smoke, particularly the families of smokers. I hope they listen to that and realize that.

Unfortunately, I know a lot about this since my parents' smoking impacted me. My mom, we thought, quit, but she became a closet smoker, which goes with Senator DODD's comment that it is hard to give it up, and I understand how hard it is to give it up. When she quit smoking and was not smoking around me, my doctor told me he was glad I quit smoking. I said I never did. He showed me the lung x rays he had taken the year before at my athletic physical and that year at my athletic physical. When they quit smoking around me, I also got over extreme hay fever.

Nearly 22 million U.S. children aged 3 to 11 are exposed to secondhand smoke. Approximately 30 percent of indoor workers in the United States are not covered by smoke-free workplace policies. Those numbers are just too high. We cannot keep paying that price.

I also have concerns about the long-term financial health of this new center at FDA. The bill gives FDA increases in funding for this program for the first 10 years but leaves it flat after that. I think Congress will have to revisit that issue or this program will wither on the vine and we will not have meaningful tobacco regulation. We cannot let that happen.

This bill does contain three important provisions for which I fought; increased fines on tobacco companies, larger color graphic warning labels, and reporting to Congress on how the program is going. I would like to talk about each of these for a moment.

We know from decades of experience that the tobacco companies are not inclined to follow the law. They do not have a history of being forthcoming with the health information in their possession. Just 2 weeks ago, the U.S. Court of Appeals for the District of Columbia found that the tobacco companies were guilty of '' . . . a decades-long conspiracy to deceive the American public about the health effects and addictiveness of smoking cigarettes.''

I am pleased I was able to add a measure to the bill that increased civil penalties for violations of the new law and sends a strong message that we are serious about expecting compliance from the tobacco industry.

The new larger color graphic warning labels provision I authored will do a lot to reduce smoking. Everyone from the World Health Organization to the Congressional Budget Office says these warnings work. Research shows these warnings have a big impact. One-fifth of the participants reported smoking less as a result of the labels. Only 1 percent reported smoking more.

We should want kids who are thinking about taking up this deadly habit to have a bit of a shock just by looking at the package. We should want smokers to think about these health issues each time they light up. Any tool in our arsenal that makes people think twice about taking up tobacco should not be an option, it should be a requirement. Now these labels are a requirement.

Finally, we now require reports on the performance of FDA's tobacco center and on the financial situation of the program. Without this regular reporting, Congress would have little insight into the operation and status of this new program. These reports play an important role in establishing the health of the programs and FDA's performance in carrying out the law.

I want to make sure the agency is doing what it is supposed to do and that the fees are paying for FDA's tobacco control activities. These reports will help us do just exactly that.

I have always stood against tobacco. The footing would have been better if changes such as my phase-out amendment to reduce tobacco use over 100 years was accepted. I know how addictive it is. I did not want to make it too short a period of time. I thought 100 years was plenty reasonable. We did not have a chance to debate that or look at it. I actually offered that a little more than a year ago. It was a new amendment then. New amendments have trouble getting traction, except in New Zealand. New Zealand liked this approach to stopping smoking and looked at it in their legislature. They even called it the Enzi bill. Of course, you have to realize that is how it sounds and that is the way they spelled it, but in New Zealand, ''NZ'' stands for their country. I think they were talking about their country's bill rather than something I had written. It was kind of fun to watch anyway.

I think we need to look at some approaches such as that idea where the tobacco companies have to reduce the number of cigarettes they are selling each and every year or purchase a number from another company to make up for the increase in cigarettes they sold, which would reduce smoking at least in one part and over a long period of time would eliminate this problem.

This bill is just one step toward the goal I know we all share, which is reducing the public health toll of tobacco use. I urge my colleagues not to rest on their laurels and think this bill is enough to combat tobacco. I intend to continue the fight against tobacco, and I ask my colleagues to join me.

I thank Senator DODD, who has been chairing this effort and working on this bill with me, for giving us a voice and taking the bill through the whole process. It was extremely important, extremely valuable. The floor discussion took longer but with less debate than I anticipated. I know some parliamentary issues got in the way of that. We could have had more success, but there were some additional amendments that could not be resolved.

I always ask people to do relevant or germane amendments to the bills. When they talk about doing other ones, it sometimes slows our process down dramatically and usually does not result in any of those amendments happening anyway.

I also wish to thank all the staff who worked on this bill. They, too, have been very diligent, have looked at everything, have done tremendous research. I particularly thank Amy Muhlberg for her efforts on this legislation. I think she knows the tobacco bill and other proposals better than probably anybody. She has real diligence and passion for it. I also thank Greg Dean of my staff for his efforts. He has a legal mind that helps us on these issues.

I thank Senator BURR for his hard work during this process. Although he ultimately was not successful, his efforts helped advance the debate and highlight some areas where improvement is needed. He put considerable time and energy into preparing a viable alternative, and I appreciate the way he created options.

Chris Wall of Senator BURR's staff was extremely helpful during the markup and floor debate, and I thank him and compliment his work with my staff and others on this bill. Jeff Teitz and Ben Olinsky of Senator KENNEDY's staff, and Jim Fenton and Jeremy Sharp of Senator DODD's staff were also critical to our progress on this bill. Finally, Megan Hauck from the Republican leader's office and the floor staff for their assistance.

I do intend to continue the fight against tobacco. I ask my colleagues to join me in this fight. I thank Senator DODD for all of his efforts. There is true passion.

I yield the floor.

REGULATING TOBACCO WAREHOUSES

Mr. WARNER. Mr. President, the bill before us grants standby authority to the Secretary of Health and Human Services to regulate ''tobacco warehouses.'' Because the bill already draws a bright line between tobacco companies that actually manufacture tobacco products and those, including growers and ''tobacco warehouses,'' that do not manufacture, I would expect that the Secretary would utilize the standby authority to regulate tobacco warehouses only under unforeseen and unanticipated circumstances that give rise to public health concerns.

Mr. DODD. That is my general understanding of the provision.

Mr. WARNER. I thank the Senator.

PESTICIDE REGULATION

Mr. CHAMBLISS. Mr. President, the EPA's Office of Pesticide Programs has been protecting the environment, agricultural workers and the public health by regulating pesticides for many years. These chemicals are commonly used in agriculture, including the production of tobacco leaf. EPA approves the use of all pesticides in the United States under the authority of the Federal Insecticide, Fungicide and Rodenticide Act—FIFRA. I would ask Senator HARKIN if this bill would in any way limit the authority of the Administrator of the Environmental Protection Agency to regulate pesticides under FIFRA.

Mr. HARKIN. I would respond to the Senator from Georgia that it is my understanding that nothing in the Family Smoking Prevention and Tobacco Control Act would restrict the Administrator's authority provided under FIFRA.

Mr. DODD. I agree with my colleagues from the Committee on Agriculture, Nutrition and Forestry.

Mr. AKAKA. Mr. President, I support the Family Smoking Prevention and Tobacco Control Act. Tobacco products kill approximately 400,000 people each year. The Food and Drug Administration, FDA, must be provided with the authority to regulate deadly tobacco products, restrict advertising, and further restrict access of tobacco to children.

The Campaign for Tobacco-Free Kids estimates that almost 10 percent of Hawaii high school students smoke. Flavored cigarettes are one of the repulsive methods used by tobacco companies to get children and teenagers to start smoking. In 2004, R.J. Reynolds Tobacco Company tried to exploit images of my home state of Hawaii and the name of one of our islands in an attempt to make smoking more attractive. One of the cigarettes, which was named Kauai Kolada, was flavored with hints of pineapple and coconut. Another lime-flavored cigarette was featured in the predatory marketing campaign. It was extraordinarily offensive that a manufacturer of such a deadly product would exploit and taint the images and names from Hawaii in an attempt to attract young smokers. This is just one example of some of the products and marketing used to attract young people to become smokers.

This legislation includes a long overdue prohibition on fruit and candy flavored cigarettes. It also will permit the FDA to restrict advertising, marketing, and sales practices in an attempt to further limit the access of tobacco products to children. This bill will help protect our children and improve the public health of our country. We must prevent tobacco companies from cultivating another generation of smokers so that they can increase sales and reap more profits at the expense of the health and well-being of our families.

In order to supplement the loss in revenue from this bill, the House added provisions to increase revenue through the introduction of a Roth-like option for Thrift Savings Plan participants. The additional revenue also covered a number of annuity enhancement, correction, and equity provisions for Federal employees. The Lieberman amendment included these provisions as well as the Non-Foreign Area Retirement Equity Assurance Act, to provide Federal employees in Alaska, Hawaii, and the territories locality pay. I strongly supported the Lieberman amendment and all the Federal employee annuitant provisions, and I am very disappointed that a lack of cooperation for this bipartisan amendment led to its defeat. I am hopeful that we will be able to address these critical issues to Federal employees very soon.

I appreciate all of the work done on this important issue by my friend from Massachusetts, Senator KENNEDY, and my friends from Connecticut, Senators DODD and LIEBERMAN. I look forward to the enactment of this vital legislation.

Mr. LEAHY. Mr. President, I am pleased the Senate is moving once again to pass legislation to regulate tobacco products in the United States. Senator KENNEDY's lifetime efforts to improve the public's health are exemplified in his fight to pass the Family Smoking Prevention and Tobacco Control Act. Despite many setbacks, Senator KENNEDY has worked tirelessly to pass this legislation and I am proud to join him again as a cosponsor of this bill. This legislation is long overdue and I look forward to it being signed into law.

The health risks associated with smoking are undisputed and cost hundreds of thousands of Americans their lives every year. Tobacco products will kill one out of three long-term smokers, leading to over 400,000 deaths per year. The Surgeon General has determined that smoking causes lung cancer, heart disease, and other serious illnesses. Deaths from tobacco products exceed deaths from HIV/AIDS, illegal drug use, alcohol use, car accidents, suicides, and murders combined.

Despite the dangers of smoking, we have seen that children have the greatest risk of becoming addicted to tobacco. Each day more than 3,500 children will try a cigarette for the first time and 1000 of those kids will become regular smokers. Among adult smokers, 90 percent started smoking as children and teens under the age of 18. In my home State of Vermont, more than 18 percent of high school students smoke. According to the Campaign for Tobacco-Free Kids, 12,000 children in Vermont will ultimately die from smoking if smoking rates remain unchanged.

These statistics are horrifying but perhaps not surprising given the historic lack of regulation of the tobacco industry. At a congressional hearing as late as 1994, tobacco industry chairmen and CEOs testified that nicotine is not addictive, even though decades of evidence showed otherwise. In fact, the tobacco industry has increased the nicotine levels in cigarettes by more than 11 percent from 1998 to 2005, increasing the risk of cigarette addiction. If enhanced nicotine levels in cigarettes is not enough to convince us that the tobacco industry should be regulated, a new study released this spring showed that changes the tobacco industry has made to cigarette design over the years has increased the risk of lung cancer for those who smoke.

In addition to making their products more potent and addictive, study after study has shown how the tobacco industry continues to successfully target advertising to minors to get them hooked for life on smoking. Each year, the tobacco industry spends over $13 billion in advertising—that is $36 million every day. Studies have showed that children are three times more sensitive to tobacco advertising than adults and are more likely to be influenced to start smoking by cigarette marketing than by peer pressure.

This bill addresses these shameful business practices by giving the United States Food and Drug Administration the authority for the first time to regulate the sale, distribution, and advertising of cigarettes and smokeless tobacco. It will require manufacturers to better disclose the contents and consequences of their products in new, stronger warning labels on packages. It will also prohibit cigarette companies from labeling their brands as reduced risk ''lite'' or ''ultra-lite'' unless the government can certify that those claims are true. The very purpose of the Food and Drug Administration is to protect the interests and safety of consumers and this legislation will finally allow the FDA to hold the tobacco industry accountable for their products.

A recent ruling by the District of Columbia Circuit Court highlights the need for serious regulation of the tobacco industry. The DC Appeals Court confirmed the district court's ruling, which found that the tobacco industry had for decades engaged in deceptive marketing tactics to conceal the negative health impacts of smoking. The ruling confirmed that tobacco companies had not changed the way their products were marketed in response to the Master Settlement Agreement, and instead the industry has more than doubled spending on marketing campaigns that included spurious claims of ''healthier'' cigarettes that are ''light'' or ''low-tar.'' The ruling did not, however, require that the tobacco industry surrender profits that resulted in the misleading advertising or stop the industry from adding flavors to make products more appealing to kids or to manipulate nicotine levels to increase addictiveness and harm. The tobacco industry must be regulated to create transparency in the contents of tobacco products and to help stop hundreds of thousands of preventable deaths each year.

For far too long, the tobacco industry has been given free rein to mislead

the public and encourage children and teens to take up smoking. The passage of this bill will give the FDA the authority it needs to effectively protect children from smoking and improve consumer awareness of tobacco industry practices, which will in turn save American lives. I urge all Senators to support passage of the Family Smoking Prevention and Tobacco Control Act.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. DODD. Mr. President, I thank my colleagues. We are getting close to the time of the vote. I would be remiss if I did not also mention our staff. I often say in a time such as this, Senators get the opportunity to stand at a podium and be heard, but there are literally dozens of people whose names most Americans will never know who make these moments happen. They deserve public recognition because they worked tirelessly, late nights, weekends, around the clock negotiating, working with each other trying to iron out provisions of the bill.

On Senator KENNEDY's staff: Jeff Teitz, Michael Myers, Ben Olinsky, Terri Roney, Shawn Daugherty, and Portia Wu. Some are in the Chamber. I thank them immensely on behalf of Senator KENNEDY.

Senator DURBIN's staff: Tom Falletti and Sara Singleton have been terrific in this effort. We thank Tom and Sara for their work.

Senator ENZI's staff: Greg Dean and Amy Muhlberg. We thank them immensely. They worked hard on this bill.

Finally I want to thank Jim Fenton from my office, Rachael Holt, Jeremy Sharp, who is sitting next to me, and Monica Feit. I have gotten a lot of help in this effort, with Senator KENNEDY's staff and Senator ENZI's staff.

There are members of the majority leader's staff who deserve our thanks as well. We always have to thank Lula, Tim, and others who make it all possible. We thank them all very much for what they do.

Again, as Senator DURBIN said, and Senator ENZI and others have said, this is a historic moment for our Chamber to be able to do something. Fifty years ago the Surgeon General warned us of tobacco use, and a half century later we are about to insist the agency in charge of food, drugs, cosmetics, and pet food also be able to include tobacco. We are about to do that.

The House and Senate bills are similar, and I believe we will have a Presidential signature on this legislation very quickly.

On behalf of millions of families across this country and as the father of a 4-year-old and a 7-year-old who do not know anything about tobacco yet, and whose mother does not smoke, never did, and a father who did but stopped, on behalf of my children and millions of children around this country, we are told by the Congressional Budget Office that an 11-percent reduction in youth smoking can happen immediately with the passage of this bill. That may not seem like much, but it is a beginning. We may just reach the goal of my colleague from Wyoming of a 100-percent reduction of young people smoking. My hope is that certainly will be the case.

Mr. President, with a little bit of time remaining, I am prepared to yield back the time, and at the appropriate moment, I will ask for the yeas and nays.

The PRESIDING OFFICER. The Senator's time has expired. The Senator from Wyoming has 3 minutes 30 seconds remaining.

Mr. ENZI. Mr. President, I yield back the remainder of my time.

Mr. DODD. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

Under the previous order, the bill having been read the third time, the question is, Shall the bill, as amended, pass?

The clerk will call the roll.

The legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from West Virginia (Mr. BYRD) and the Senator from Massachusetts (Mr. KENNEDY) are necessarily absent.

Mr. KYL. The following Senator is necessarily absent: the Senator from Missouri (Mr. BOND).

Further, if present and voting, the Senator from Missouri (Mr. BOND) would have voted ''nay.''

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 79, nays 17, as follows:

[Rollcall Vote No. 207 Leg.]

YEAS—79

Akaka	Grassley	Nelson (FL)
Barrasso	Gregg	Pryor
Baucus	Harkin	Reed
Bayh	Hutchison	Reid
Begich	Inouye	Risch
Bennet	Johanns	Rockefeller
Bingaman	Johnson	Sanders
Boxer	Kaufman	Schumer
Brown	Kerry	Sessions
Burris	Klobuchar	Shaheen
Cantwell	Kohl	Shelby
Cardin	Landrieu	Snowe
Carper	Lautenberg	Specter
Casey	Leahy	Stabenow
Cochran	Levin	Tester
Collins	Lieberman	Thune
Conrad	Lincoln	Udall (CO)
Corker	Lugar	Udall (NM)
Cornyn	Martinez	Vitter
Crapo	McCain	Voinovich
Dodd	McCaskill	Warner
Dorgan	Menendez	Webb
Durbin	Merkley	Whitehouse
Enzi	Mikulski	Wicker
Feingold	Murkowski	Wyden
Feinstein	Murray	
Gillibrand	Nelson (NE)	

NAYS—17

Alexander	Coburn	Inhofe
Bennett	DeMint	Isakson
Brownback	Ensign	Kyl
Bunning	Graham	McConnell
Burr	Hagan	Roberts
Chambliss	Hatch	

NOT VOTING—3

Bond	Byrd	Kennedy

The bill (H.R. 1256), as amended, was passed, as follows:

H.R. 1256

Resolved, That the bill from the House of Representatives (H.R. 1256) entitled ''An Act to protect the public health by providing the Food and Drug Administration with certain authority to regulate tobacco products, to amend title 5, United States Code, to make certain modifications in the Thrift Savings Plan, the Civil Service Retirement System, and the Federal Employees' Retirement System, and for other purposes.'', do pass with the following amendment:

Strike all after the enacting clause and insert the following:

DIVISION A—FAMILY SMOKING PREVENTION AND TOBACCO CONTROL ACT

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This division may be cited as the ''Family Smoking Prevention and Tobacco Control Act''.

(b) TABLE OF CONTENTS.—The table of contents of this division is as follows:

SEC. 2. FINDINGS.

The Congress finds the following:

(1) The use of tobacco products by the Nation's children is a pediatric disease of considerable proportions that results in new generations of tobacco-dependent children and adults.

(2) A consensus exists within the scientific and medical communities that tobacco products are inherently dangerous and cause cancer, heart disease, and other serious adverse health effects.

(3) Nicotine is an addictive drug.

(4) Virtually all new users of tobacco products are under the minimum legal age to purchase such products.

(5) Tobacco advertising and marketing contribute significantly to the use of nicotine-containing tobacco products by adolescents.

(6) Because past efforts to restrict advertising and marketing of tobacco products have failed adequately to curb tobacco use by adolescents, comprehensive restrictions on the sale, promotion, and distribution of such products are needed.

(7) Federal and State governments have lacked the legal and regulatory authority and resources they need to address comprehensively the public health and societal problems caused by the use of tobacco products.

(8) Federal and State public health officials, the public health community, and the public at large recognize that the tobacco industry should be subject to ongoing oversight.

(9) Under article I, section 8 of the Constitution, the Congress is vested with the responsibility for regulating interstate commerce and commerce with Indian tribes.

(10) The sale, distribution, marketing, advertising, and use of tobacco products are activities in and substantially affecting interstate commerce because they are sold, marketed, advertised, and distributed in interstate commerce on a nationwide basis, and have a substantial effect on the Nation's economy.

(11) The sale, distribution, marketing, advertising, and use of such products substantially affect interstate commerce through the health care and other costs attributable to the use of tobacco products.

(12) It is in the public interest for Congress to enact legislation that provides the Food and Drug Administration with the authority to regulate tobacco products and the advertising and promotion of such products. The benefits to the American people from enacting such legislation would be significant in human and economic terms.

(13) Tobacco use is the foremost preventable cause of premature death in America. It causes over 400,000 deaths in the United States each year, and approximately 8,600,000 Americans have chronic illnesses related to smoking.

(14) Reducing the use of tobacco by minors by 50 percent would prevent well over 10,000,000 of today's children from becoming regular, daily smokers, saving over 3,000,000 of them from premature death due to tobacco-induced disease. Such a reduction in youth smoking would also result in approximately $75,000,000,000 in savings attributable to reduced health care costs.

(15) Advertising, marketing, and promotion of tobacco products have been especially directed to attract young persons to use tobacco products, and these efforts have resulted in increased use of such products by youth. Past efforts to oversee these activities have not been successful in adequately preventing such increased use.

(16) In 2005, the cigarette manufacturers spent more than $13,000,000,000 to attract new users, retain current users, increase current consumption, and generate favorable long-term attitudes toward smoking and tobacco use.

(17) Tobacco product advertising often misleadingly portrays the use of tobacco as socially acceptable and healthful to minors.

(18) Tobacco product advertising is regularly seen by persons under the age of 18, and persons under the age of 18 are regularly exposed to tobacco product promotional efforts.

(19) Through advertisements during and sponsorship of sporting events, tobacco has become strongly associated with sports and has become portrayed as an integral part of sports and the healthy lifestyle associated with rigorous sporting activity.

(20) Children are exposed to substantial and unavoidable tobacco advertising that leads to favorable beliefs about tobacco use, plays a role in leading young people to overestimate the prevalence of tobacco use, and increases the number of young people who begin to use tobacco.

(21) The use of tobacco products in motion pictures and other mass media glamorizes its use for young people and encourages them to use tobacco products.

(22) Tobacco advertising expands the size of the tobacco market by increasing consumption of tobacco products including tobacco use by young people.

(23) Children are more influenced by tobacco marketing than adults: more than 80 percent of youth smoke three heavily marketed brands, while only 54 percent of adults, 26 and older, smoke these same brands.

(24) Tobacco company documents indicate that young people are an important and often crucial segment of the tobacco market. Children, who tend to be more price sensitive than adults, are influenced by advertising and promotion practices that result in drastically reduced cigarette prices.

(25) Comprehensive advertising restrictions will have a positive effect on the smoking rates of young people.

(26) Restrictions on advertising are necessary to prevent unrestricted tobacco advertising from undermining legislation prohibiting access to young people and providing for education about tobacco use.

(27) International experience shows that advertising regulations that are stringent and comprehensive have a greater impact on overall tobacco use and young people's use than weaker or less comprehensive ones.

(28) Text only requirements, although not as stringent as a ban, will help reduce underage use of tobacco products while preserving the informational function of advertising.

(29) It is in the public interest for Congress to adopt legislation to address the public health crisis created by actions of the tobacco industry.

(30) The final regulations promulgated by the Secretary of Health and Human Services in the August 28, 1996, issue of the Federal Register (61 Fed. Reg. 44615–44618) for inclusion as part 897 of title 21, Code of Federal Regulations, are consistent with the first amendment to the United States Constitution and with the standards set forth in the amendments made by this subtitle for the regulation of tobacco products by the Food and Drug Administration, and the restriction on the sale and distribution of, including access to and the advertising and promotion of, tobacco products contained in such regulations are substantially related to accomplishing the public health goals of this division.

(31) The regulations described in paragraph (30) will directly and materially advance the Federal Government's substantial interest in reducing the number of children and adolescents who use cigarettes and smokeless tobacco and in preventing the life-threatening health consequences associated with tobacco use. An overwhelming majority of Americans who use tobacco products begin using such products while they are minors and become addicted to the nicotine in those products before reaching the age of 18. Tobacco advertising and promotion play a crucial role in the decision of these minors to begin using tobacco products. Less restrictive and less comprehensive approaches have not and will not be effective in reducing the problems addressed by such regulations. The reasonable restrictions on the advertising and promotion of tobacco products contained in such regulations will lead to a significant decrease in the number of minors using and becoming addicted to those products.

(32) The regulations described in paragraph (30) impose no more extensive restrictions on communication by tobacco manufacturers and sellers than are necessary to reduce the number of children and adolescents who use cigarettes and smokeless tobacco and to prevent the life-threatening health consequences associated with tobacco use. Such regulations are narrowly tailored to restrict those advertising and promotional practices which are most likely to be seen or heard by youth and most likely to entice them into tobacco use, while affording tobacco manufacturers and sellers ample opportunity to convey information about their products to adult consumers.

(33) Tobacco dependence is a chronic disease, one that typically requires repeated interventions to achieve long-term or permanent abstinence.

(34) Because the only known safe alternative to smoking is cessation, interventions should target all smokers to help them quit completely.

(35) Tobacco products have been used to facilitate and finance criminal activities both domestically and internationally. Illicit trade of tobacco products has been linked to organized crime and terrorist groups.

(36) It is essential that the Food and Drug Administration review products sold or distributed for use to reduce risks or exposures associated with tobacco products and that it be empowered to review any advertising and labeling for such products. It is also essential that manufacturers, prior to marketing such products, be required to demonstrate that such products will meet a series of rigorous criteria, and will benefit the health of the population as a whole, taking into account both users of tobacco products and persons who do not currently use tobacco products.

(37) Unless tobacco products that purport to reduce the risks to the public of tobacco use actually reduce such risks, those products can cause substantial harm to the public health to the extent that the individuals, who would otherwise not consume tobacco products or would consume such products less, use tobacco products purporting to reduce risk. Those who use products sold or distributed as modified risk products that do not in fact reduce risk, rather than quitting or reducing their use of tobacco products, have a substantially increased likelihood of suffering disability and premature death. The costs to society of the widespread use of products sold or distributed as modified risk products that do not in fact reduce risk or that increase risk include thousands of unnecessary deaths and injuries and huge costs to our health care system.

(38) As the National Cancer Institute has found, many smokers mistakenly believe that ''low tar'' and ''light'' cigarettes cause fewer health problems than other cigarettes. As the National Cancer Institute has also found, mistaken beliefs about the health consequences of smoking ''low tar'' and ''light'' cigarettes can reduce the motivation to quit smoking entirely and thereby lead to disease and death.

(39) Recent studies have demonstrated that there has been no reduction in risk on a population-wide basis from ''low tar'' and ''light'' cigarettes, and such products may actually increase the risk of tobacco use.

(40) The dangers of products sold or distributed as modified risk tobacco products that do not in fact reduce risk are so high that there is a compelling governmental interest in ensuring that statements about modified risk tobacco products are complete, accurate, and relate to the overall disease risk of the product.

(41) As the Federal Trade Commission has found, consumers have misinterpreted advertisements in which one product is claimed to be less harmful than a comparable product, even in the presence of disclosures and advisories intended to provide clarification.

(42) Permitting manufacturers to make unsubstantiated statements concerning modified risk tobacco products, whether express or implied, even if accompanied by disclaimers would be detrimental to the public health.

(43) The only way to effectively protect the public health from the dangers of unsubstantiated modified risk tobacco products is to empower the Food and Drug Administration to require that products that tobacco manufacturers sold or distributed for risk reduction be reviewed in advance of marketing, and to require that the evidence relied on to support claims be fully verified.

(44) The Food and Drug Administration is a regulatory agency with the scientific expertise to identify harmful substances in products to which consumers are exposed, to design standards to limit exposure to those substances, to evaluate scientific studies supporting claims about the safety of products, and to evaluate the impact of labels, labeling, and advertising on consumer behavior in order to reduce the risk of harm and promote understanding of the impact of the product on health. In connection

with its mandate to promote health and reduce the risk of harm, the Food and Drug Administration routinely makes decisions about whether and how products may be marketed in the United States.

(45) The Federal Trade Commission was created to protect consumers from unfair or deceptive acts or practices, and to regulate unfair methods of competition. Its focus is on those marketplace practices that deceive or mislead consumers, and those that give some competitors an unfair advantage. Its mission is to regulate activities in the marketplace. Neither the Federal Trade Commission nor any other Federal agency except the Food and Drug Administration possesses the scientific expertise needed to implement effectively all provisions of the Family Smoking Prevention and Tobacco Control Act.

(46) If manufacturers state or imply in communications directed to consumers through the media or through a label, labeling, or advertising, that a tobacco product is approved or inspected by the Food and Drug Administration or complies with Food and Drug Administration standards, consumers are likely to be confused and misled. Depending upon the particular language used and its context, such a statement could result in consumers being misled into believing that the product is endorsed by the Food and Drug Administration for use or in consumers being misled about the harmfulness of the product because of such regulation, inspection, approval, or compliance.

(47) In August 2006 a United States district court judge found that the major United States cigarette companies continue to target and market to youth. USA v. Philip Morris, USA, Inc., et al. (Civil Action No. 99–2496 (GK), August 17, 2006).

(48) In August 2006 a United States district court judge found that the major United States cigarette companies dramatically increased their advertising and promotional spending in ways that encourage youth to start smoking subsequent to the signing of the Master Settlement Agreement in 1998. USA v. Philip Morris, USA, Inc., et al. (Civil Action No. 99–2496 (GK), August 17, 2006).

(49) In August 2006 a United States district court judge found that the major United States cigarette companies have designed their cigarettes to precisely control nicotine delivery levels and provide doses of nicotine sufficient to create and sustain addiction while also concealing much of their nicotine-related research. USA v. Philip Morris, USA, Inc., et al. (Civil Action No. 99–2496 (GK), August 17, 2006).

SEC. 3. PURPOSE.

The purposes of this division are—

(1) to provide authority to the Food and Drug Administration to regulate tobacco products under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.), by recognizing it as the primary Federal regulatory authority with respect to the manufacture, marketing, and distribution of tobacco products as provided for in this division;

(2) to ensure that the Food and Drug Administration has the authority to address issues of particular concern to public health officials, especially the use of tobacco by young people and dependence on tobacco;

(3) to authorize the Food and Drug Administration to set national standards controlling the manufacture of tobacco products and the identity, public disclosure, and amount of ingredients used in such products;

(4) to provide new and flexible enforcement authority to ensure that there is effective oversight of the tobacco industry's efforts to develop, introduce, and promote less harmful tobacco products;

(5) to vest the Food and Drug Administration with the authority to regulate the levels of tar, nicotine, and other harmful components of tobacco products;

(6) in order to ensure that consumers are better informed, to require tobacco product manufacturers to disclose research which has not previously been made available, as well as research generated in the future, relating to the health and dependency effects or safety of tobacco products;

(7) to continue to permit the sale of tobacco products to adults in conjunction with measures to ensure that they are not sold or accessible to underage purchasers;

(8) to impose appropriate regulatory controls on the tobacco industry;

(9) to promote cessation to reduce disease risk and the social costs associated with tobacco-related diseases; and

(10) to strengthen legislation against illicit trade in tobacco products.

SEC. 4. SCOPE AND EFFECT.

(a) INTENDED EFFECT.—Nothing in this division (or an amendment made by this division) shall be construed to—

(1) establish a precedent with regard to any other industry, situation, circumstance, or legal action; or

(2) affect any action pending in Federal, State, or tribal court, or any agreement, consent decree, or contract of any kind.

(b) AGRICULTURAL ACTIVITIES.—The provisions of this division (or an amendment made by this division) which authorize the Secretary to take certain actions with regard to tobacco and tobacco products shall not be construed to affect any authority of the Secretary of Agriculture under existing law regarding the growing, cultivation, or curing of raw tobacco.

(c) REVENUE ACTIVITIES.—The provisions of this division (or an amendment made by this division) which authorize the Secretary to take certain actions with regard to tobacco products shall not be construed to affect any authority of the Secretary of the Treasury under chapter 52 of the Internal Revenue Code of 1986.

SEC. 5. SEVERABILITY.

If any provision of this division, of the amendments made by this division, or of the regulations promulgated under this division (or under such amendments), or the application of any such provision to any person or circumstance is held to be invalid, the remainder of this division, such amendments and such regulations, and the application of such provisions to any other person or circumstance shall not be affected and shall continue to be enforced to the fullest extent possible.

SEC. 6. MODIFICATION OF DEADLINES FOR SECRETARIAL ACTION.

(a) DELAYED COMMENCEMENT OF DATES FOR SECRETARIAL ACTION.—

(1) IN GENERAL.—Except as provided in subsection (c), with respect to any time periods specified in this division (or in an amendment made by this division) that begin on the date of enactment of this Act, within which the Secretary of Health and Human Services is required to carry out and complete specified activities, the calculation of such time periods shall commence on the date described in subsection (b).

(2) LIMITATION.—Subsection (a) shall only apply with respect to obligations of the Secretary of Health and Human Services that must be completed within a specified time period and shall not apply to the obligations of any other person or to any other provision of this division (including the amendments made by this division) that do not create such obligations of the Secretary and are not contingent on actions by the Secretary.

(b) DATE DESCRIBED.—The date described in this subsection is the first day of the first fiscal quarter following the initial 2 consecutive fiscal quarters of fiscal year 2010 for which the Secretary of Health and Human Services has collected fees under section 919 of the Federal Food, Drug, and Cosmetic Act (as added by section 101).

(c) EXCEPTION.—Subsection (a) shall not apply to any time period (or date) contained—

(1) in section 102, except that the reference to ''180 days'' in subsection (a)(1) of such section shall be deemed to be ''270 days''; and

(2) in sections 201 through 204 (or the amendments made by any such sections).

(d) ADJUSTMENT.—The Secretary of Health and Human Services may extend or reduce the duration of one or more time periods to which subsection (a) applies if the Secretary determines appropriate, except that no such period shall be extended for more than 90 days.

TITLE I—AUTHORITY OF THE FOOD AND DRUG ADMINISTRATION

SEC. 101. AMENDMENT OF FEDERAL FOOD, DRUG, AND COSMETIC ACT.

(a) DEFINITION OF TOBACCO PRODUCTS.—Section 201 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321) is amended by adding at the end the following:

''(rr)(1) The term 'tobacco product' means any product made or derived from tobacco that is intended for human consumption, including any component, part, or accessory of a tobacco product (except for raw materials other than tobacco used in manufacturing a component, part, or accessory of a tobacco product).

''(2) The term 'tobacco product' does not mean an article that is a drug under subsection (g)(1), a device under subsection (h), or a combination product described in section 503(g).

''(3) The products described in paragraph (2) shall be subject to chapter V of this Act.

''(4) A tobacco product shall not be marketed in combination with any other article or product regulated under this Act (including a drug, biologic, food, cosmetic, medical device, or a dietary supplement).''.

(b) FDA AUTHORITY OVER TOBACCO PRODUCTS.—The Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.) is amended—

(1) by redesignating chapter IX as chapter X;

(2) by redesignating sections 901 through 910 as sections 1001 through 1010; and

(3) by inserting after chapter VIII the following:

''CHAPTER IX—TOBACCO PRODUCTS

''SEC. 900. DEFINITIONS.

''In this chapter:

''(1) ADDITIVE.—The term 'additive' means any substance the intended use of which results or may reasonably be expected to result, directly or indirectly, in its becoming a component or otherwise affecting the characteristic of any tobacco product (including any substances intended for use as a flavoring or coloring or in producing, manufacturing, packing, processing, preparing, treating, packaging, transporting, or holding), except that such term does not include tobacco or a pesticide chemical residue in or on raw tobacco or a pesticide chemical.

''(2) BRAND.—The term 'brand' means a variety of tobacco product distinguished by the tobacco used, tar content, nicotine content, flavoring used, size, filtration, packaging, logo, registered trademark, brand name, identifiable pattern of colors, or any combination of such attributes.

''(3) CIGARETTE.—The term 'cigarette'—

''(A) means a product that—

''(i) is a tobacco product; and

''(ii) meets the definition of the term 'cigarette' in section 3(1) of the Federal Cigarette Labeling and Advertising Act; and

''(B) includes tobacco, in any form, that is functional in the product, which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette or as roll-your-own tobacco.

''(4) CIGARETTE TOBACCO.—The term 'cigarette tobacco' means any product that consists of loose tobacco that is intended for use by consumers in a cigarette. Unless otherwise stated, the requirements applicable to cigarettes under this chapter shall also apply to cigarette tobacco.

''(5) COMMERCE.—The term 'commerce' has the meaning given that term by section 3(2) of

the Federal Cigarette Labeling and Advertising Act.

''(6) COUNTERFEIT TOBACCO PRODUCT.—The term 'counterfeit tobacco product' means a tobacco product (or the container or labeling of such a product) that, without authorization, bears the trademark, trade name, or other identifying mark, imprint, or device, or any likeness thereof, of a tobacco product listed in a registration under section 905(i)(1).

''(7) DISTRIBUTOR.—The term 'distributor' as regards a tobacco product means any person who furthers the distribution of a tobacco product, whether domestic or imported, at any point from the original place of manufacture to the person who sells or distributes the product to individuals for personal consumption. Common carriers are not considered distributors for purposes of this chapter.

''(8) ILLICIT TRADE.—The term 'illicit trade' means any practice or conduct prohibited by law which relates to production, shipment, receipt, possession, distribution, sale, or purchase of tobacco products including any practice or conduct intended to facilitate such activity.

''(9) INDIAN COUNTRY.—The term 'Indian country' has the meaning given such term in section 1151 of title 18, United States Code.

''(10) INDIAN TRIBE.—The term 'Indian tribe' has the meaning given such term in section 4(e) of the Indian Self-Determination and Education Assistance Act.

''(11) LITTLE CIGAR.—The term 'little cigar' means a product that—

''(A) is a tobacco product; and

''(B) meets the definition of the term 'little cigar' in section 3(7) of the Federal Cigarette Labeling and Advertising Act.

''(12) NICOTINE.—The term 'nicotine' means the chemical substance named 3-(1-Methyl-2-pyrrolidinyl) pyridine or C[10]H[14]N[2], including any salt or complex of nicotine.

''(13) PACKAGE.—The term 'package' means a pack, box, carton, or container of any kind or, if no other container, any wrapping (including cellophane), in which a tobacco product is offered for sale, sold, or otherwise distributed to consumers.

''(14) RETAILER.—The term 'retailer' means any person, government, or entity who sells tobacco products to individuals for personal consumption, or who operates a facility where self-service displays of tobacco products are permitted.

''(15) ROLL-YOUR-OWN TOBACCO.—The term 'roll-your-own tobacco' means any tobacco product which, because of its appearance, type, packaging, or labeling, is suitable for use and likely to be offered to, or purchased by, consumers as tobacco for making cigarettes.

''(16) SMALL TOBACCO PRODUCT MANUFACTURER.—The term 'small tobacco product manufacturer' means a tobacco product manufacturer that employs fewer than 350 employees. For purposes of determining the number of employees of a manufacturer under the preceding sentence, the employees of a manufacturer are deemed to include the employees of each entity that controls, is controlled by, or is under common control with such manufacturer.

''(17) SMOKE CONSTITUENT.—The term 'smoke constituent' means any chemical or chemical compound in mainstream or sidestream tobacco smoke that either transfers from any component of the cigarette to the smoke or that is formed by the combustion or heating of tobacco, additives, or other component of the tobacco product.

''(18) SMOKELESS TOBACCO.—The term 'smokeless tobacco' means any tobacco product that consists of cut, ground, powdered, or leaf tobacco and that is intended to be placed in the oral or nasal cavity.

''(19) STATE; TERRITORY.—The terms 'State' and 'Territory' shall have the meanings given to such terms in section 201.

''(20) TOBACCO PRODUCT MANUFACTURER.—The term 'tobacco product manufacturer' means any person, including any repacker or relabeler, who—

''(A) manufactures, fabricates, assembles, processes, or labels a tobacco product; or

''(B) imports a finished tobacco product for sale or distribution in the United States.

''(21) TOBACCO WAREHOUSE.—

''(A) Subject to subparagraphs (B) and (C), the term 'tobacco warehouse' includes any person—

''(i) who—

''(I) removes foreign material from tobacco leaf through nothing other than a mechanical process;

''(II) humidifies tobacco leaf with nothing other than potable water in the form of steam or mist; or

''(III) de-stems, dries, and packs tobacco leaf for storage and shipment;

''(ii) who performs no other actions with respect to tobacco leaf; and

''(iii) who provides to any manufacturer to whom the person sells tobacco all information related to the person's actions described in clause (i) that is necessary for compliance with this Act.

''(B) The term 'tobacco warehouse' excludes any person who—

''(i) reconstitutes tobacco leaf;

''(ii) is a manufacturer, distributor, or retailer of a tobacco product; or

''(iii) applies any chemical, additive, or substance to the tobacco leaf other than potable water in the form of steam or mist.

''(C) The definition of the term 'tobacco warehouse' in subparagraph (A) shall not apply to the extent to which the Secretary determines, through rulemaking, that regulation under this chapter of the actions described in such subparagraph is appropriate for the protection of the public health.

''(22) UNITED STATES.—The term 'United States' means the 50 States of the United States of America and the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, American Samoa, Wake Island, Midway Islands, Kingman Reef, Johnston Atoll, the Northern Mariana Islands, and any other trust territory or possession of the United States.

''SEC. 901. FDA AUTHORITY OVER TOBACCO PRODUCTS.

''(a) IN GENERAL.—Tobacco products, including modified risk tobacco products for which an order has been issued in accordance with section 911, shall be regulated by the Secretary under this chapter and shall not be subject to the provisions of chapter V.

''(b) APPLICABILITY.—This chapter shall apply to all cigarettes, cigarette tobacco, roll-your-own tobacco, and smokeless tobacco and to any other tobacco products that the Secretary by regulation deems to be subject to this chapter.

''(c) SCOPE.—

''(1) IN GENERAL.—Nothing in this chapter, or any policy issued or regulation promulgated thereunder, or in sections 101(a), 102, or 103 of title I, title II, or title III of the Family Smoking Prevention and Tobacco Control Act, shall be construed to affect, expand, or limit the Secretary's authority over (including the authority to determine whether products may be regulated), or the regulation of, products under this Act that are not tobacco products under chapter V or any other chapter.

''(2) LIMITATION OF AUTHORITY.—

''(A) IN GENERAL.—The provisions of this chapter shall not apply to tobacco leaf that is not in the possession of a manufacturer of tobacco products, or to the producers of tobacco leaf, including tobacco growers, tobacco warehouses, and tobacco grower cooperatives, nor shall any employee of the Food and Drug Administration have any authority to enter onto a farm owned by a producer of tobacco leaf without the written consent of such producer.

''(B) EXCEPTION.—Notwithstanding subparagraph (A), if a producer of tobacco leaf is also a tobacco product manufacturer or controlled by a tobacco product manufacturer, the producer shall be subject to this chapter in the producer's capacity as a manufacturer. The exception in this subparagraph shall not apply to a producer of tobacco leaf who grows tobacco under a contract with a tobacco product manufacturer and who is not otherwise engaged in the manufacturing process.

''(C) RULE OF CONSTRUCTION.—Nothing in this chapter shall be construed to grant the Secretary authority to promulgate regulations on any matter that involves the production of tobacco leaf or a producer thereof, other than activities by a manufacturer affecting production.

''(d) RULEMAKING PROCEDURES.—Each rulemaking under this chapter shall be in accordance with chapter 5 of title 5, United States Code. This subsection shall not be construed to affect the rulemaking provisions of section 102(a) of the Family Smoking Prevention and Tobacco Control Act.

''(e) CENTER FOR TOBACCO PRODUCTS.—Not later than 90 days after the date of enactment of the Family Smoking Prevention and Tobacco Control Act, the Secretary shall establish within the Food and Drug Administration the Center for Tobacco Products, which shall report to the Commissioner of Food and Drugs in the same manner as the other agency centers within the Food and Drug Administration. The Center shall be responsible for the implementation of this chapter and related matters assigned by the Commissioner.

''(f) OFFICE TO ASSIST SMALL TOBACCO PRODUCT MANUFACTURERS.—The Secretary shall establish within the Food and Drug Administration an identifiable office to provide technical and other nonfinancial assistance to small tobacco product manufacturers to assist them in complying with the requirements of this Act.

''(g) CONSULTATION PRIOR TO RULEMAKING.—Prior to promulgating rules under this chapter, the Secretary shall endeavor to consult with other Federal agencies as appropriate.

''SEC. 902. ADULTERATED TOBACCO PRODUCTS.

''A tobacco product shall be deemed to be adulterated if—

''(1) it consists in whole or in part of any filthy, putrid, or decomposed substance, or is otherwise contaminated by any added poisonous or added deleterious substance that may render the product injurious to health;

''(2) it has been prepared, packed, or held under insanitary conditions whereby it may have been contaminated with filth, or whereby it may have been rendered injurious to health;

''(3) its package is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health;

''(4) the manufacturer or importer of the tobacco product fails to pay a user fee assessed to such manufacturer or importer pursuant to section 919 by the date specified in section 919 or by the 30th day after final agency action on a resolution of any dispute as to the amount of such fee;

''(5) it is, or purports to be or is represented as, a tobacco product which is subject to a tobacco product standard established under section 907 unless such tobacco product is in all respects in conformity with such standard;

''(6)(A) it is required by section 910(a) to have premarket review and does not have an order in effect under section 910(c)(1)(A)(i); or

''(B) it is in violation of an order under section 910(c)(1)(A);

''(7) the methods used in, or the facilities or controls used for, its manufacture, packing, or storage are not in conformity with applicable requirements under section 906(e)(1) or an applicable condition prescribed by an order under section 906(e)(2); or

''(8) it is in violation of section 911.

''SEC. 903. MISBRANDED TOBACCO PRODUCTS.

''(a) IN GENERAL.—A tobacco product shall be deemed to be misbranded—

''(1) if its labeling is false or misleading in any particular;

''(2) if in package form unless it bears a label containing—

''(A) the name and place of business of the tobacco product manufacturer, packer, or distributor;

''(B) an accurate statement of the quantity of the contents in terms of weight, measure, or numerical count;

''(C) an accurate statement of the percentage of the tobacco used in the product that is domestically grown tobacco and the percentage that is foreign grown tobacco; and

''(D) the statement required under section 920(a),

except that under subparagraph (B) reasonable variations shall be permitted, and exemptions as to small packages shall be established, by regulations prescribed by the Secretary;

''(3) if any word, statement, or other information required by or under authority of this chapter to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, or designs in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;

''(4) if it has an established name, unless its label bears, to the exclusion of any other nonproprietary name, its established name prominently printed in type as required by the Secretary by regulation;

''(5) if the Secretary has issued regulations requiring that its labeling bear adequate directions for use, or adequate warnings against use by children, that are necessary for the protection of users unless its labeling conforms in all respects to such regulations;

''(6) if it was manufactured, prepared, propagated, compounded, or processed in an establishment not duly registered under section 905(b), 905(c), 905(d), or 905(h), if it was not included in a list required by section 905(i), if a notice or other information respecting it was not provided as required by such section or section 905(j), or if it does not bear such symbols from the uniform system for identification of tobacco products prescribed under section 905(e) as the Secretary by regulation requires;

''(7) if, in the case of any tobacco product distributed or offered for sale in any State—

''(A) its advertising is false or misleading in any particular; or

''(B) it is sold or distributed in violation of regulations prescribed under section 906(d);

''(8) unless, in the case of any tobacco product distributed or offered for sale in any State, the manufacturer, packer, or distributor thereof includes in all advertisements and other descriptive printed matter issued or caused to be issued by the manufacturer, packer, or distributor with respect to that tobacco product—

''(A) a true statement of the tobacco product's established name as described in paragraph (4), printed prominently; and

''(B) a brief statement of—

''(i) the uses of the tobacco product and relevant warnings, precautions, side effects, and contraindications; and

''(ii) in the case of specific tobacco products made subject to a finding by the Secretary after notice and opportunity for comment that such action is appropriate to protect the public health, a full description of the components of such tobacco product or the formula showing quantitatively each ingredient of such tobacco product to the extent required in regulations which shall be issued by the Secretary after an opportunity for a hearing;

''(9) if it is a tobacco product subject to a tobacco product standard established under section 907, unless it bears such labeling as may be prescribed in such tobacco product standard; or

''(10) if there was a failure or refusal—

''(A) to comply with any requirement prescribed under section 904 or 908; or

''(B) to furnish any material or information required under section 909.

''(b) PRIOR APPROVAL OF LABEL STATEMENTS.—The Secretary may, by regulation, require prior approval of statements made on the label of a tobacco product to ensure that such statements do not violate the misbranding provisions of subsection (a) and that such statements comply with other provisions of the Family Smoking Prevention and Tobacco Control Act (including the amendments made by such Act). No regulation issued under this subsection may require prior approval by the Secretary of the content of any advertisement, except for modified risk tobacco products as provided in section 911. No advertisement of a tobacco product published after the date of enactment of the Family Smoking Prevention and Tobacco Control Act shall, with respect to the language of label statements as prescribed under section 4 of the Federal Cigarette Labeling and Advertising Act and section 3 of the Comprehensive Smokeless Tobacco Health Education Act of 1986 or the regulations issued under such sections, be subject to the provisions of sections 12 through 15 of the Federal Trade Commission Act.

''SEC. 904. SUBMISSION OF HEALTH INFORMATION TO THE SECRETARY.

''(a) REQUIREMENT.—Each tobacco product manufacturer or importer, or agents thereof, shall submit to the Secretary the following information:

''(1) Not later than 6 months after the date of enactment of the Family Smoking Prevention and Tobacco Control Act, a listing of all ingredients, including tobacco, substances, compounds, and additives that are, as of such date, added by the manufacturer to the tobacco, paper, filter, or other part of each tobacco product by brand and by quantity in each brand and subbrand.

''(2) A description of the content, delivery, and form of nicotine in each tobacco product measured in milligrams of nicotine in accordance with regulations promulgated by the Secretary in accordance with section 4(e) of the Federal Cigarette Labeling and Advertising Act.

''(3) Beginning 3 years after the date of enactment of the Family Smoking Prevention and Tobacco Control Act, a listing of all constituents, including smoke constituents as applicable, identified by the Secretary as harmful or potentially harmful to health in each tobacco product, and as applicable in the smoke of each tobacco product, by brand and by quantity in each brand and subbrand. Effective beginning 3 years after such date of enactment, the manufacturer, importer, or agent shall comply with regulations promulgated under section 915 in reporting information under this paragraph, where applicable.

''(4) Beginning 6 months after the date of enactment of the Family Smoking Prevention and Tobacco Control Act, all documents developed after such date of enactment that relate to health, toxicological, behavioral, or physiologic effects of current or future tobacco products, their constituents (including smoke constituents), ingredients, components, and additives.

''(b) DATA SUBMISSION.—At the request of the Secretary, each tobacco product manufacturer or importer of tobacco products, or agents thereof, shall submit the following:

''(1) Any or all documents (including underlying scientific information) relating to research activities, and research findings, conducted, supported, or possessed by the manufacturer (or agents thereof) on the health, toxicological, behavioral, or physiologic effects of tobacco products and their constituents (including smoke constituents), ingredients, components, and additives.

''(2) Any or all documents (including underlying scientific information) relating to research activities, and research findings, conducted, supported, or possessed by the manufacturer (or agents thereof) that relate to the issue of whether a reduction in risk to health from tobacco products can occur upon the employment of technology available or known to the manufacturer.

''(3) Any or all documents (including underlying scientific or financial information) relating to marketing research involving the use of tobacco products or marketing practices and the effectiveness of such practices used by tobacco manufacturers and distributors.

An importer of a tobacco product not manufactured in the United States shall supply the information required of a tobacco product manufacturer under this subsection.

''(c) TIME FOR SUBMISSION.—

''(1) IN GENERAL.—At least 90 days prior to the delivery for introduction into interstate commerce of a tobacco product not on the market on the date of enactment of the Family Smoking Prevention and Tobacco Control Act, the manufacturer of such product shall provide the information required under subsection (a).

''(2) DISCLOSURE OF ADDITIVE.—If at any time a tobacco product manufacturer adds to its tobacco products a new tobacco additive or increases the quantity of an existing tobacco additive, the manufacturer shall, except as provided in paragraph (3), at least 90 days prior to such action so advise the Secretary in writing.

''(3) DISCLOSURE OF OTHER ACTIONS.—If at any time a tobacco product manufacturer eliminates or decreases an existing additive, or adds or increases an additive that has by regulation been designated by the Secretary as an additive that is not a human or animal carcinogen, or otherwise harmful to health under intended conditions of use, the manufacturer shall within 60 days of such action so advise the Secretary in writing.

''(d) DATA LIST.—

''(1) IN GENERAL.—Not later than 3 years after the date of enactment of the Family Smoking Prevention and Tobacco Control Act, and annually thereafter, the Secretary shall publish in a format that is understandable and not misleading to a lay person, and place on public display (in a manner determined by the Secretary) the list established under subsection (e).

''(2) CONSUMER RESEARCH.—The Secretary shall conduct periodic consumer research to ensure that the list published under paragraph (1) is not misleading to lay persons. Not later than 5 years after the date of enactment of the Family Smoking Prevention and Tobacco Control Act, the Secretary shall submit to the appropriate committees of Congress a report on the results of such research, together with recommendations on whether such publication should be continued or modified.

''(e) DATA COLLECTION.—Not later than 24 months after the date of enactment of the Family Smoking Prevention and Tobacco Control Act, the Secretary shall establish, and periodically revise as appropriate, a list of harmful and potentially harmful constituents, including smoke constituents, to health in each tobacco product by brand and by quantity in each brand and subbrand. The Secretary shall publish a public notice requesting the submission by interested persons of scientific and other information concerning the harmful and potentially harmful constituents in tobacco products and tobacco smoke.

''SEC. 905. ANNUAL REGISTRATION.

''(a) DEFINITIONS.—In this section:

''(1) MANUFACTURE, PREPARATION, COMPOUNDING, OR PROCESSING.—The term 'manufacture, preparation, compounding, or processing' shall include repackaging or otherwise changing the container, wrapper, or labeling of any tobacco product package in furtherance of the distribution of the tobacco product from the original place of manufacture to the person who makes final delivery or sale to the ultimate consumer or user.

''(2) NAME.—The term 'name' shall include in the case of a partnership the name of each partner and, in the case of a corporation, the name of each corporate officer and director, and the State of incorporation.

''(b) REGISTRATION BY OWNERS AND OPERATORS.—On or before December 31 of each year,

every person who owns or operates any establishment in any State engaged in the manufacture, preparation, compounding, or processing of a tobacco product or tobacco products shall register with the Secretary the name, places of business, and all such establishments of that person. If enactment of the Family Smoking Prevention and Tobacco Control Act occurs in the second half of the calendar year, the Secretary shall designate a date no later than 6 months into the subsequent calendar year by which registration pursuant to this subsection shall occur.

''(c) REGISTRATION BY NEW OWNERS AND OPERATORS.—Every person upon first engaging in the manufacture, preparation, compounding, or processing of a tobacco product or tobacco products in any establishment owned or operated in any State by that person shall immediately register with the Secretary that person's name, place of business, and such establishment.

''(d) REGISTRATION OF ADDED ESTABLISHMENTS.—Every person required to register under subsection (b) or (c) shall immediately register with the Secretary any additional establishment which that person owns or operates in any State and in which that person begins the manufacture, preparation, compounding, or processing of a tobacco product or tobacco products.

''(e) UNIFORM PRODUCT IDENTIFICATION SYSTEM.—The Secretary may by regulation prescribe a uniform system for the identification of tobacco products and may require that persons who are required to list such tobacco products under subsection (i) shall list such tobacco products in accordance with such system.

''(f) PUBLIC ACCESS TO REGISTRATION INFORMATION.—The Secretary shall make available for inspection, to any person so requesting, any registration filed under this section.

''(g) BIENNIAL INSPECTION OF REGISTERED ESTABLISHMENTS.—Every establishment registered with the Secretary under this section shall be subject to inspection under section 704 or subsection (h), and every such establishment engaged in the manufacture, compounding, or processing of a tobacco product or tobacco products shall be so inspected by 1 or more officers or employees duly designated by the Secretary at least once in the 2-year period beginning with the date of registration of such establishment under this section and at least once in every successive 2-year period thereafter.

''(h) REGISTRATION BY FOREIGN ESTABLISHMENTS.—Any establishment within any foreign country engaged in the manufacture, preparation, compounding, or processing of a tobacco product or tobacco products, shall register under this section under regulations promulgated by the Secretary. Such regulations shall require such establishment to provide the information required by subsection (i) and shall include provisions for registration of any such establishment upon condition that adequate and effective means are available, by arrangement with the government of such foreign country or otherwise, to enable the Secretary to determine from time to time whether tobacco products manufactured, prepared, compounded, or processed in such establishment, if imported or offered for import into the United States, shall be refused admission on any of the grounds set forth in section 801(a).

''(i) REGISTRATION INFORMATION.—

''(1) PRODUCT LIST.—Every person who registers with the Secretary under subsection (b), (c), (d), or (h) shall, at the time of registration under any such subsection, file with the Secretary a list of all tobacco products which are being manufactured, prepared, compounded, or processed by that person for commercial distribution and which have not been included in any list of tobacco products filed by that person with the Secretary under this paragraph or paragraph (2) before such time of registration. Such list shall be prepared in such form and manner as the Secretary may prescribe and shall be accompanied by—

''(A) in the case of a tobacco product contained in the applicable list with respect to which a tobacco product standard has been established under section 907 or which is subject to section 910, a reference to the authority for the marketing of such tobacco product and a copy of all labeling for such tobacco product;

''(B) in the case of any other tobacco product contained in an applicable list, a copy of all consumer information and other labeling for such tobacco product, a representative sampling of advertisements for such tobacco product, and, upon request made by the Secretary for good cause, a copy of all advertisements for a particular tobacco product; and

''(C) if the registrant filing a list has determined that a tobacco product contained in such list is not subject to a tobacco product standard established under section 907, a brief statement of the basis upon which the registrant made such determination if the Secretary requests such a statement with respect to that particular tobacco product.

''(2) CONSULTATION WITH RESPECT TO FORMS.—The Secretary shall consult with the Secretary of the Treasury in developing the forms to be used for registration under this section to minimize the burden on those persons required to register with both the Secretary and the Tax and Trade Bureau of the Department of the Treasury.

''(3) BIANNUAL REPORT OF ANY CHANGE IN PRODUCT LIST.—Each person who registers with the Secretary under this section shall report to the Secretary once during the month of June of each year and once during the month of December of each year the following:

''(A) A list of each tobacco product introduced by the registrant for commercial distribution which has not been included in any list previously filed by that person with the Secretary under this subparagraph or paragraph (1). A list under this subparagraph shall list a tobacco product by its established name and shall be accompanied by the other information required by paragraph (1).

''(B) If since the date the registrant last made a report under this paragraph that person has discontinued the manufacture, preparation, compounding, or processing for commercial distribution of a tobacco product included in a list filed under subparagraph (A) or paragraph (1), notice of such discontinuance, the date of such discontinuance, and the identity of its established name.

''(C) If since the date the registrant reported under subparagraph (B) a notice of discontinuance that person has resumed the manufacture, preparation, compounding, or processing for commercial distribution of the tobacco product with respect to which such notice of discontinuance was reported, notice of such resumption, the date of such resumption, the identity of such tobacco product by established name, and other information required by paragraph (1), unless the registrant has previously reported such resumption to the Secretary under this subparagraph.

''(D) Any material change in any information previously submitted under this paragraph or paragraph (1).

''(j) REPORT PRECEDING INTRODUCTION OF CERTAIN SUBSTANTIALLY EQUIVALENT PRODUCTS INTO INTERSTATE COMMERCE.—

''(1) IN GENERAL.—Each person who is required to register under this section and who proposes to begin the introduction or delivery for introduction into interstate commerce for commercial distribution of a tobacco product intended for human use that was not commercially marketed (other than for test marketing) in the United States as of February 15, 2007, shall, at least 90 days prior to making such introduction or delivery, report to the Secretary (in such form and manner as the Secretary shall prescribe)—

''(A) the basis for such person's determination that—

''(i) the tobacco product is substantially equivalent, within the meaning of section 910, to a tobacco product commercially marketed (other than for test marketing) in the United States as of February 15, 2007, or to a tobacco product that the Secretary has previously determined, pursuant to subsection (a)(3) of section 910, is substantially equivalent and that is in compliance with the requirements of this Act; or

''(ii) the tobacco product is modified within the meaning of paragraph (3), the modifications are to a product that is commercially marketed and in compliance with the requirements of this Act, and all of the modifications are covered by exemptions granted by the Secretary pursuant to paragraph (3); and

''(B) action taken by such person to comply with the requirements under section 907 that are applicable to the tobacco product.

''(2) APPLICATION TO CERTAIN POST-FEBRUARY 15, 2007, PRODUCTS.—A report under this subsection for a tobacco product that was first introduced or delivered for introduction into interstate commerce for commercial distribution in the United States after February 15, 2007, and prior to the date that is 21 months after the date of enactment of the Family Smoking Prevention and Tobacco Control Act shall be submitted to the Secretary not later than 21 months after such date of enactment.

''(3) EXEMPTIONS.—

''(A) IN GENERAL.—The Secretary may exempt from the requirements of this subsection relating to the demonstration that a tobacco product is substantially equivalent within the meaning of section 910, tobacco products that are modified by adding or deleting a tobacco additive, or increasing or decreasing the quantity of an existing tobacco additive, if the Secretary determines that—

''(i) such modification would be a minor modification of a tobacco product that can be sold under this Act;

''(ii) a report under this subsection is not necessary to ensure that permitting the tobacco product to be marketed would be appropriate for protection of the public health; and

''(iii) an exemption is otherwise appropriate.

''(B) REGULATIONS.—Not later than 15 months after the date of enactment of the Family Smoking Prevention and Tobacco Control Act, the Secretary shall issue regulations to implement this paragraph.

''SEC. 906. GENERAL PROVISIONS RESPECTING CONTROL OF TOBACCO PRODUCTS.

''(a) IN GENERAL.—Any requirement established by or under section 902, 903, 905, or 909 applicable to a tobacco product shall apply to such tobacco product until the applicability of the requirement to the tobacco product has been changed by action taken under section 907, section 910, section 911, or subsection (d) of this section, and any requirement established by or under section 902, 903, 905, or 909 which is inconsistent with a requirement imposed on such tobacco product under section 907, section 910, section 911, or subsection (d) of this section shall not apply to such tobacco product.

''(b) INFORMATION ON PUBLIC ACCESS AND COMMENT.—Each notice of proposed rulemaking or other notification under section 907, 908, 909, 910, or 911 or under this section, any other notice which is published in the Federal Register with respect to any other action taken under any such section and which states the reasons for such action, and each publication of findings required to be made in connection with rulemaking under any such section shall set forth—

''(1) the manner in which interested persons may examine data and other information on which the notice or findings is based; and

''(2) the period within which interested persons may present their comments on the notice or findings (including the need therefore) orally or in writing, which period shall be at least 60 days but may not exceed 90 days unless the time

is extended by the Secretary by a notice published in the Federal Register stating good cause therefore.

''(c) LIMITED CONFIDENTIALITY OF INFORMATION.—Any information reported to or otherwise obtained by the Secretary or the Secretary's representative under section 903, 904, 907, 908, 909, 910, 911, or 704, or under subsection (e) or (f) of this section, which is exempt from disclosure under subsection (a) of section 552 of title 5, United States Code, by reason of subsection (b)(4) of that section shall be considered confidential and shall not be disclosed, except that the information may be disclosed to other officers or employees concerned with carrying out this chapter, or when relevant in any proceeding under this chapter.

''(d) RESTRICTIONS.—

''(1) IN GENERAL.—The Secretary may by regulation require restrictions on the sale and distribution of a tobacco product, including restrictions on the access to, and the advertising and promotion of, the tobacco product, if the Secretary determines that such regulation would be appropriate for the protection of the public health. The Secretary may by regulation impose restrictions on the advertising and promotion of a tobacco product consistent with and to full extent permitted by the first amendment to the Constitution. The finding as to whether such regulation would be appropriate for the protection of the public health shall be determined with respect to the risks and benefits to the population as a whole, including users and nonusers of the tobacco product, and taking into account—

''(A) the increased or decreased likelihood that existing users of tobacco products will stop using such products; and

''(B) the increased or decreased likelihood that those who do not use tobacco products will start using such products.

No such regulation may require that the sale or distribution of a tobacco product be limited to the written or oral authorization of a practitioner licensed by law to prescribe medical products.

''(2) LABEL STATEMENTS.—The label of a tobacco product shall bear such appropriate statements of the restrictions required by a regulation under subsection (a) as the Secretary may in such regulation prescribe.

''(3) LIMITATIONS.—

''(A) IN GENERAL.—No restrictions under paragraph (1) may—

''(i) prohibit the sale of any tobacco product in face-to-face transactions by a specific category of retail outlets; or

''(ii) establish a minimum age of sale of tobacco products to any person older than 18 years of age.

''(B) MATCHBOOKS.—For purposes of any regulations issued by the Secretary, matchbooks of conventional size containing not more than 20 paper matches, and which are customarily given away for free with the purchase of tobacco products, shall be considered as adult-written publications which shall be permitted to contain advertising. Notwithstanding the preceding sentence, if the Secretary finds that such treatment of matchbooks is not appropriate for the protection of the public health, the Secretary may determine by regulation that matchbooks shall not be considered adult-written publications.

''(4) REMOTE SALES.—

''(A) IN GENERAL.—The Secretary shall—

''(i) within 18 months after the date of enactment of the Family Smoking Prevention and Tobacco Control Act, promulgate regulations regarding the sale and distribution of tobacco products that occur through means other than a direct, face-to-face exchange between a retailer and a consumer in order to prevent the sale and distribution of tobacco products to individuals who have not attained the minimum age established by applicable law for the purchase of such products, including requirements for age verification; and

''(ii) within 2 years after such date of enactment, issue regulations to address the promotion and marketing of tobacco products that are sold or distributed through means other than a direct, face-to-face exchange between a retailer and a consumer in order to protect individuals who have not attained the minimum age established by applicable law for the purchase of such products.

''(B) RELATION TO OTHER AUTHORITY.—Nothing in this paragraph limits the authority of the Secretary to take additional actions under the other paragraphs of this subsection.

''(e) GOOD MANUFACTURING PRACTICE REQUIREMENTS.—

''(1) METHODS, FACILITIES, AND CONTROLS TO CONFORM.—

''(A) IN GENERAL.—In applying manufacturing restrictions to tobacco, the Secretary shall, in accordance with subparagraph (B), prescribe regulations (which may differ based on the type of tobacco product involved) requiring that the methods used in, and the facilities and controls used for, the manufacture, preproduction design validation (including a process to assess the performance of a tobacco product), packing, and storage of a tobacco product conform to current good manufacturing practice, or hazard analysis and critical control point methodology, as prescribed in such regulations to assure that the public health is protected and that the tobacco product is in compliance with this chapter. Such regulations may provide for the testing of raw tobacco for pesticide chemical residues regardless of whether a tolerance for such chemical residues has been established.

''(B) REQUIREMENTS.—The Secretary shall—

''(i) before promulgating any regulation under subparagraph (A), afford the Tobacco Products Scientific Advisory Committee an opportunity to submit recommendations with respect to the regulation proposed to be promulgated;

''(ii) before promulgating any regulation under subparagraph (A), afford opportunity for an oral hearing;

''(iii) provide the Tobacco Products Scientific Advisory Committee a reasonable time to make its recommendation with respect to proposed regulations under subparagraph (A);

''(iv) in establishing the effective date of a regulation promulgated under this subsection, take into account the differences in the manner in which the different types of tobacco products have historically been produced, the financial resources of the different tobacco product manufacturers, and the state of their existing manufacturing facilities, and shall provide for a reasonable period of time for such manufacturers to conform to good manufacturing practices; and

''(v) not require any small tobacco product manufacturer to comply with a regulation under subparagraph (A) for at least 4 years following the effective date established by the Secretary for such regulation.

''(2) EXEMPTIONS; VARIANCES.—

''(A) PETITION.—Any person subject to any requirement prescribed under paragraph (1) may petition the Secretary for a permanent or temporary exemption or variance from such requirement. Such a petition shall be submitted to the Secretary in such form and manner as the Secretary shall prescribe and shall—

''(i) in the case of a petition for an exemption from a requirement, set forth the basis for the petitioner's determination that compliance with the requirement is not required to assure that the tobacco product will be in compliance with this chapter;

''(ii) in the case of a petition for a variance from a requirement, set forth the methods proposed to be used in, and the facilities and controls proposed to be used for, the manufacture, packing, and storage of the tobacco product in lieu of the methods, facilities, and controls prescribed by the requirement; and

''(iii) contain such other information as the Secretary shall prescribe.

''(B) REFERRAL TO THE TOBACCO PRODUCTS SCIENTIFIC ADVISORY COMMITTEE.—The Secretary may refer to the Tobacco Products Scientific Advisory Committee any petition submitted under subparagraph (A). The Tobacco Products Scientific Advisory Committee shall report its recommendations to the Secretary with respect to a petition referred to it within 60 days after the date of the petition's referral. Within 60 days after—

''(i) the date the petition was submitted to the Secretary under subparagraph (A); or

''(ii) the day after the petition was referred to the Tobacco Products Scientific Advisory Committee,

whichever occurs later, the Secretary shall by order either deny the petition or approve it.

''(C) APPROVAL.—The Secretary may approve—

''(i) a petition for an exemption for a tobacco product from a requirement if the Secretary determines that compliance with such requirement is not required to assure that the tobacco product will be in compliance with this chapter; and

''(ii) a petition for a variance for a tobacco product from a requirement if the Secretary determines that the methods to be used in, and the facilities and controls to be used for, the manufacture, packing, and storage of the tobacco product in lieu of the methods, facilities, and controls prescribed by the requirement are sufficient to assure that the tobacco product will be in compliance with this chapter.

''(D) CONDITIONS.—An order of the Secretary approving a petition for a variance shall prescribe such conditions respecting the methods used in, and the facilities and controls used for, the manufacture, packing, and storage of the tobacco product to be granted the variance under the petition as may be necessary to assure that the tobacco product will be in compliance with this chapter.

''(E) HEARING.—After the issuance of an order under subparagraph (B) respecting a petition, the petitioner shall have an opportunity for an informal hearing on such order.

''(3) COMPLIANCE.—Compliance with requirements under this subsection shall not be required before the end of the 3-year period following the date of enactment of the Family Smoking Prevention and Tobacco Control Act.

''(f) RESEARCH AND DEVELOPMENT.—The Secretary may enter into contracts for research, testing, and demonstrations respecting tobacco products and may obtain tobacco products for research, testing, and demonstration purposes.

''SEC. 907. TOBACCO PRODUCT STANDARDS.

''(a) IN GENERAL.—

''(1) SPECIAL RULES.—

''(A) SPECIAL RULE FOR CIGARETTES.—Beginning 3 months after the date of enactment of the Family Smoking Prevention and Tobacco Control Act, a cigarette or any of its component parts (including the tobacco, filter, or paper) shall not contain, as a constituent (including a smoke constituent) or additive, an artificial or natural flavor (other than tobacco or menthol) or an herb or spice, including strawberry, grape, orange, clove, cinnamon, pineapple, vanilla, coconut, licorice, cocoa, chocolate, cherry, or coffee, that is a characterizing flavor of the tobacco product or tobacco smoke. Nothing in this subparagraph shall be construed to limit the Secretary's authority to take action under this section or other sections of this Act applicable to menthol or any artificial or natural flavor, herb, or spice not specified in this subparagraph.

''(B) ADDITIONAL SPECIAL RULE.—Beginning 2 years after the date of enactment of the Family Smoking Prevention and Tobacco Control Act, a tobacco product manufacturer shall not use tobacco, including foreign grown tobacco, that contains a pesticide chemical residue that is at a level greater than is specified by any tolerance applicable under Federal law to domestically grown tobacco.

''(2) REVISION OF TOBACCO PRODUCT STANDARDS.—The Secretary may revise the tobacco

product standards in paragraph (1) in accordance with subsection (c).

''(3) TOBACCO PRODUCT STANDARDS.—

''(A) IN GENERAL.—The Secretary may adopt tobacco product standards in addition to those in paragraph (1) if the Secretary finds that a tobacco product standard is appropriate for the protection of the public health.

''(B) DETERMINATIONS.—

''(i) CONSIDERATIONS.—In making a finding described in subparagraph (A), the Secretary shall consider scientific evidence concerning—

''(I) the risks and benefits to the population as a whole, including users and nonusers of tobacco products, of the proposed standard;

''(II) the increased or decreased likelihood that existing users of tobacco products will stop using such products; and

''(III) the increased or decreased likelihood that those who do not use tobacco products will start using such products.

''(ii) ADDITIONAL CONSIDERATIONS.—In the event that the Secretary makes a determination, set forth in a proposed tobacco product standard in a proposed rule, that it is appropriate for the protection of public health to require the reduction or elimination of an additive, constituent (including a smoke constituent), or other component of a tobacco product because the Secretary has found that the additive, constituent, or other component is or may be harmful, any party objecting to the proposed standard on the ground that the proposed standard will not reduce or eliminate the risk of illness or injury may provide for the Secretary's consideration scientific evidence that demonstrates that the proposed standard will not reduce or eliminate the risk of illness or injury.

''(4) CONTENT OF TOBACCO PRODUCT STANDARDS.—A tobacco product standard established under this section for a tobacco product—

''(A) shall include provisions that are appropriate for the protection of the public health, including provisions, where appropriate—

''(i) for nicotine yields of the product;

''(ii) for the reduction or elimination of other constituents, including smoke constituents, or harmful components of the product; or

''(iii) relating to any other requirement under subparagraph (B);

''(B) shall, where appropriate for the protection of the public health, include—

''(i) provisions respecting the construction, components, ingredients, additives, constituents, including smoke constituents, and properties of the tobacco product;

''(ii) provisions for the testing (on a sample basis or, if necessary, on an individual basis) of the tobacco product;

''(iii) provisions for the measurement of the tobacco product characteristics of the tobacco product;

''(iv) provisions requiring that the results of each or of certain of the tests of the tobacco product required to be made under clause (ii) show that the tobacco product is in conformity with the portions of the standard for which the test or tests were required; and

''(v) a provision requiring that the sale and distribution of the tobacco product be restricted but only to the extent that the sale and distribution of a tobacco product may be restricted under a regulation under section 906(d);

''(C) shall, where appropriate, require the use and prescribe the form and content of labeling for the proper use of the tobacco product; and

''(D) shall require tobacco products containing foreign-grown tobacco to meet the same standards applicable to tobacco products containing domestically grown tobacco.

''(5) PERIODIC REEVALUATION OF TOBACCO PRODUCT STANDARDS.—The Secretary shall provide for periodic evaluation of tobacco product standards established under this section to determine whether such standards should be changed to reflect new medical, scientific, or other technological data. The Secretary may provide for testing under paragraph (4)(B) by any person.

''(6) INVOLVEMENT OF OTHER AGENCIES; INFORMED PERSONS.—In carrying out duties under this section, the Secretary shall endeavor to—

''(A) use personnel, facilities, and other technical support available in other Federal agencies;

''(B) consult with other Federal agencies concerned with standard setting and other nationally or internationally recognized standard-setting entities; and

''(C) invite appropriate participation, through joint or other conferences, workshops, or other means, by informed persons representative of scientific, professional, industry, agricultural, or consumer organizations who in the Secretary's judgment can make a significant contribution.

''(b) CONSIDERATIONS BY SECRETARY.—

''(1) TECHNICAL ACHIEVABILITY.—The Secretary shall consider information submitted in connection with a proposed standard regarding the technical achievability of compliance with such standard.

''(2) OTHER CONSIDERATIONS.—The Secretary shall consider all other information submitted in connection with a proposed standard, including information concerning the countervailing effects of the tobacco product standard on the health of adolescent tobacco users, adult tobacco users, or nontobacco users, such as the creation of a significant demand for contraband or other tobacco products that do not meet the requirements of this chapter and the significance of such demand.

''(c) PROPOSED STANDARDS.—

''(1) IN GENERAL.—The Secretary shall publish in the Federal Register a notice of proposed rulemaking for the establishment, amendment, or revocation of any tobacco product standard.

''(2) REQUIREMENTS OF NOTICE.—A notice of proposed rulemaking for the establishment or amendment of a tobacco product standard for a tobacco product shall—

''(A) set forth a finding with supporting justification that the tobacco product standard is appropriate for the protection of the public health;

''(B) invite interested persons to submit a draft or proposed tobacco product standard for consideration by the Secretary;

''(C) invite interested persons to submit comments on structuring the standard so that it does not advantage foreign-grown tobacco over domestically grown tobacco; and

''(D) invite the Secretary of Agriculture to provide any information or analysis which the Secretary of Agriculture believes is relevant to the proposed tobacco product standard.

''(3) FINDING.—A notice of proposed rulemaking for the revocation of a tobacco product standard shall set forth a finding with supporting justification that the tobacco product standard is no longer appropriate for the protection of the public health.

''(4) COMMENT.—The Secretary shall provide for a comment period of not less than 60 days.

''(d) PROMULGATION.—

''(1) IN GENERAL.—After the expiration of the period for comment on a notice of proposed rulemaking published under subsection (c) respecting a tobacco product standard and after consideration of comments submitted under subsections (b) and (c) and any report from the Tobacco Products Scientific Advisory Committee, the Secretary shall—

''(A) if the Secretary determines that the standard would be appropriate for the protection of the public health, promulgate a regulation establishing a tobacco product standard and publish in the Federal Register findings on the matters referred to in subsection (c); or

''(B) publish a notice terminating the proceeding for the development of the standard together with the reasons for such termination.

''(2) EFFECTIVE DATE.—A regulation establishing a tobacco product standard shall set forth the date or dates upon which the standard shall take effect, but no such regulation may take effect before 1 year after the date of its publication unless the Secretary determines that an earlier effective date is necessary for the protection of the public health. Such date or dates shall be established so as to minimize, consistent with the public health, economic loss to, and disruption or dislocation of, domestic and international trade. In establishing such effective date or dates, the Secretary shall consider information submitted in connection with a proposed product standard by interested parties, including manufacturers and tobacco growers, regarding the technical achievability of compliance with the standard, and including information concerning the existence of patents that make it impossible to comply in the timeframe envisioned in the proposed standard. If the Secretary determines, based on the Secretary's evaluation of submitted comments, that a product standard can be met only by manufacturers requiring substantial changes to the methods of farming the domestically grown tobacco used by the manufacturer, the effective date of that product standard shall be not less than 2 years after the date of publication of the final regulation establishing the standard.

''(3) LIMITATION ON POWER GRANTED TO THE FOOD AND DRUG ADMINISTRATION.—Because of the importance of a decision of the Secretary to issue a regulation—

''(A) banning all cigarettes, all smokeless tobacco products, all little cigars, all cigars other than little cigars, all pipe tobacco, or all roll-your-own tobacco products; or

''(B) requiring the reduction of nicotine yields of a tobacco product to zero,

the Secretary is prohibited from taking such actions under this Act.

''(4) AMENDMENT; REVOCATION.—

''(A) AUTHORITY.—The Secretary, upon the Secretary's own initiative or upon petition of an interested person, may by a regulation, promulgated in accordance with the requirements of subsection (c) and paragraph (2), amend or revoke a tobacco product standard.

''(B) EFFECTIVE DATE.—The Secretary may declare a proposed amendment of a tobacco product standard to be effective on and after its publication in the Federal Register and until the effective date of any final action taken on such amendment if the Secretary determines that making it so effective is in the public interest.

''(5) REFERRAL TO ADVISORY COMMITTEE.—

''(A) IN GENERAL.—The Secretary may refer a proposed regulation for the establishment, amendment, or revocation of a tobacco product standard to the Tobacco Products Scientific Advisory Committee for a report and recommendation with respect to any matter involved in the proposed regulation which requires the exercise of scientific judgment.

''(B) INITIATION OF REFERRAL.—The Secretary may make a referral under this paragraph—

''(i) on the Secretary's own initiative; or

''(ii) upon the request of an interested person that—

''(I) demonstrates good cause for the referral; and

''(II) is made before the expiration of the period for submission of comments on the proposed regulation.

''(C) PROVISION OF DATA.—If a proposed regulation is referred under this paragraph to the Tobacco Products Scientific Advisory Committee, the Secretary shall provide the Advisory Committee with the data and information on which such proposed regulation is based.

''(D) REPORT AND RECOMMENDATION.—The Tobacco Products Scientific Advisory Committee shall, within 60 days after the referral of a proposed regulation under this paragraph and after independent study of the data and information furnished to it by the Secretary and other data and information before it, submit to the Secretary a report and recommendation respecting such regulation, together with all underlying data and information and a statement of the reason or basis for the recommendation.

''(E) PUBLIC AVAILABILITY.—The Secretary shall make a copy of each report and recommendation under subparagraph (D) publicly available.

''(e) MENTHOL CIGARETTES.—

''(1) REFERRAL; CONSIDERATIONS.—Immediately upon the establishment of the Tobacco Products Scientific Advisory Committee under section 917(a), the Secretary shall refer to the Committee for report and recommendation, under section 917(c)(4), the issue of the impact of the use of menthol in cigarettes on the public health, including such use among children, African-Americans, Hispanics, and other racial and ethnic minorities. In its review, the Tobacco Products Scientific Advisory Committee shall address the considerations listed in subsections (a)(3)(B)(i) and (b).

''(2) REPORT AND RECOMMENDATION.—Not later than 1 year after its establishment, the Tobacco Product Scientific Advisory Committee shall submit to the Secretary the report and recommendations required pursuant to paragraph (1).

''(3) RULE OF CONSTRUCTION.—Nothing in this subsection shall be construed to limit the Secretary's authority to take action under this section or other sections of this Act applicable to menthol.

''(f) DISSOLVABLE TOBACCO PRODUCTS.—

''(1) REFERRAL; CONSIDERATIONS.—The Secretary shall refer to the Tobacco Products Scientific Advisory Committee for report and recommendation, under section 917(c)(4), the issue of the nature and impact of the use of dissolvable tobacco products on the public health, including such use among children. In its review, the Tobacco Products Scientific Advisory Committee shall address the considerations listed in subsection (a)(3)(B)(i).

''(2) REPORT AND RECOMMENDATION.—Not later than 2 years after its establishment, the Tobacco Product Scientific Advisory Committee shall submit to the Secretary the report and recommendations required pursuant to paragraph (1).

''(3) RULE OF CONSTRUCTION.—Nothing in this subsection shall be construed to limit the Secretary's authority to take action under this section or other sections of this Act at any time applicable to any dissolvable tobacco product.

''SEC. 908. NOTIFICATION AND OTHER REMEDIES.

''(a) NOTIFICATION.—If the Secretary determines that—

''(1) a tobacco product which is introduced or delivered for introduction into interstate commerce for commercial distribution presents an unreasonable risk of substantial harm to the public health; and

''(2) notification under this subsection is necessary to eliminate the unreasonable risk of such harm and no more practicable means is available under the provisions of this chapter (other than this section) to eliminate such risk, the Secretary may issue such order as may be necessary to assure that adequate notification is provided in an appropriate form, by the persons and means best suited under the circumstances involved, to all persons who should properly receive such notification in order to eliminate such risk. The Secretary may order notification by any appropriate means, including public service announcements. Before issuing an order under this subsection, the Secretary shall consult with the persons who are to give notice under the order.

''(b) NO EXEMPTION FROM OTHER LIABILITY.—Compliance with an order issued under this section shall not relieve any person from liability under Federal or State law. In awarding damages for economic loss in an action brought for the enforcement of any such liability, the value to the plaintiff in such action of any remedy provided under such order shall be taken into account.

''(c) RECALL AUTHORITY.—

''(1) IN GENERAL.—If the Secretary finds that there is a reasonable probability that a tobacco product contains a manufacturing or other defect not ordinarily contained in tobacco products on the market that would cause serious, adverse health consequences or death, the Secretary shall issue an order requiring the appropriate person (including the manufacturers, importers, distributors, or retailers of the tobacco product) to immediately cease distribution of such tobacco product. The order shall provide the person subject to the order with an opportunity for an informal hearing, to be held not later than 10 days after the date of the issuance of the order, on the actions required by the order and on whether the order should be amended to require a recall of such tobacco product. If, after providing an opportunity for such a hearing, the Secretary determines that inadequate grounds exist to support the actions required by the order, the Secretary shall vacate the order.

''(2) AMENDMENT OF ORDER TO REQUIRE RECALL.—

''(A) IN GENERAL.—If, after providing an opportunity for an informal hearing under paragraph (1), the Secretary determines that the order should be amended to include a recall of the tobacco product with respect to which the order was issued, the Secretary shall, except as provided in subparagraph (B), amend the order to require a recall. The Secretary shall specify a timetable in which the tobacco product recall will occur and shall require periodic reports to the Secretary describing the progress of the recall.

''(B) NOTICE.—An amended order under subparagraph (A)—

''(i) shall not include recall of a tobacco product from individuals; and

''(ii) shall provide for notice to persons subject to the risks associated with the use of such tobacco product.

In providing the notice required by clause (ii), the Secretary may use the assistance of retailers and other persons who distributed such tobacco product. If a significant number of such persons cannot be identified, the Secretary shall notify such persons under section 705(b).

''(3) REMEDY NOT EXCLUSIVE.—The remedy provided by this subsection shall be in addition to remedies provided by subsection (a).

''SEC. 909. RECORDS AND REPORTS ON TOBACCO PRODUCTS.

''(a) IN GENERAL.—Every person who is a tobacco product manufacturer or importer of a tobacco product shall establish and maintain such records, make such reports, and provide such information, as the Secretary may by regulation reasonably require to assure that such tobacco product is not adulterated or misbranded and to otherwise protect public health. Regulations prescribed under the preceding sentence—

''(1) may require a tobacco product manufacturer or importer to report to the Secretary whenever the manufacturer or importer receives or otherwise becomes aware of information that reasonably suggests that one of its marketed tobacco products may have caused or contributed to a serious unexpected adverse experience associated with the use of the product or any significant increase in the frequency of a serious, expected adverse product experience;

''(2) shall require reporting of other significant adverse tobacco product experiences as determined by the Secretary to be necessary to be reported;

''(3) shall not impose requirements unduly burdensome to a tobacco product manufacturer or importer, taking into account the cost of complying with such requirements and the need for the protection of the public health and the implementation of this chapter;

''(4) when prescribing the procedure for making requests for reports or information, shall require that each request made under such regulations for submission of a report or information to the Secretary state the reason or purpose for such request and identify to the fullest extent practicable such report or information;

''(5) when requiring submission of a report or information to the Secretary, shall state the reason or purpose for the submission of such report or information and identify to the fullest extent practicable such report or information; and

''(6) may not require that the identity of any patient or user be disclosed in records, reports, or information required under this subsection unless required for the medical welfare of an individual, to determine risks to public health of a tobacco product, or to verify a record, report, or information submitted under this chapter.

In prescribing regulations under this subsection, the Secretary shall have due regard for the professional ethics of the medical profession and the interests of patients. The prohibitions of paragraph (6) continue to apply to records, reports, and information concerning any individual who has been a patient, irrespective of whether or when he ceases to be a patient.

''(b) REPORTS OF REMOVALS AND CORRECTIONS.—

''(1) IN GENERAL.—Except as provided in paragraph (2), the Secretary shall by regulation require a tobacco product manufacturer or importer of a tobacco product to report promptly to the Secretary any corrective action taken or removal from the market of a tobacco product undertaken by such manufacturer or importer if the removal or correction was undertaken—

''(A) to reduce a risk to health posed by the tobacco product; or

''(B) to remedy a violation of this chapter caused by the tobacco product which may present a risk to health.

A tobacco product manufacturer or importer of a tobacco product who undertakes a corrective action or removal from the market of a tobacco product which is not required to be reported under this subsection shall keep a record of such correction or removal.

''(2) EXCEPTION.—No report of the corrective action or removal of a tobacco product may be required under paragraph (1) if a report of the corrective action or removal is required and has been submitted under subsection (a).

''SEC. 910. APPLICATION FOR REVIEW OF CERTAIN TOBACCO PRODUCTS.

''(a) IN GENERAL.—

''(1) NEW TOBACCO PRODUCT DEFINED.—For purposes of this section the term 'new tobacco product' means—

''(A) any tobacco product (including those products in test markets) that was not commercially marketed in the United States as of February 15, 2007; or

''(B) any modification (including a change in design, any component, any part, or any constituent, including a smoke constituent, or in the content, delivery or form of nicotine, or any other additive or ingredient) of a tobacco product where the modified product was commercially marketed in the United States after February 15, 2007.

''(2) PREMARKET REVIEW REQUIRED.—

''(A) NEW PRODUCTS.—An order under subsection (c)(1)(A)(i) for a new tobacco product is required unless—

''(i) the manufacturer has submitted a report under section 905(j); and the Secretary has issued an order that the tobacco product—

''(I) is substantially equivalent to a tobacco product commercially marketed (other than for test marketing) in the United States as of February 15, 2007; and

''(II) is in compliance with the requirements of this Act; or

''(ii) the tobacco product is exempt from the requirements of section 905(j) pursuant to a regulation issued under section 905(j)(3).

''(B) APPLICATION TO CERTAIN POST-FEBRUARY 15, 2007, PRODUCTS.—Subparagraph (A) shall not apply to a tobacco product—

''(i) that was first introduced or delivered for introduction into interstate commerce for commercial distribution in the United States after February 15, 2007, and prior to the date that is 21 months after the date of enactment of the

Family Smoking Prevention and Tobacco Control Act; and

''(ii) for which a report was submitted under section 905(j) within such 21-month period,

except that subparagraph (A) shall apply to the tobacco product if the Secretary issues an order that the tobacco product is not substantially equivalent.

''(3) SUBSTANTIALLY EQUIVALENT DEFINED.—

''(A) IN GENERAL.—In this section and section 905(j), the term 'substantially equivalent' or 'substantial equivalence' means, with respect to the tobacco product being compared to the predicate tobacco product, that the Secretary by order has found that the tobacco product—

''(i) has the same characteristics as the predicate tobacco product; or

''(ii) has different characteristics and the information submitted contains information, including clinical data if deemed necessary by the Secretary, that demonstrates that it is not appropriate to regulate the product under this section because the product does not raise different questions of public health.

''(B) CHARACTERISTICS.—In subparagraph (A), the term 'characteristics' means the materials, ingredients, design, composition, heating source, or other features of a tobacco product.

''(C) LIMITATION.—A tobacco product may not be found to be substantially equivalent to a predicate tobacco product that has been removed from the market at the initiative of the Secretary or that has been determined by a judicial order to be misbranded or adulterated.

''(4) HEALTH INFORMATION.—

''(A) SUMMARY.—As part of a submission under section 905(j) respecting a tobacco product, the person required to file a premarket notification under such section shall provide an adequate summary of any health information related to the tobacco product or state that such information will be made available upon request by any person.

''(B) REQUIRED INFORMATION.—Any summary under subparagraph (A) respecting a tobacco product shall contain detailed information regarding data concerning adverse health effects and shall be made available to the public by the Secretary within 30 days of the issuance of a determination that such tobacco product is substantially equivalent to another tobacco product.

''(b) APPLICATION.—

''(1) CONTENTS.—An application under this section shall contain—

''(A) full reports of all information, published or known to, or which should reasonably be known to, the applicant, concerning investigations which have been made to show the health risks of such tobacco product and whether such tobacco product presents less risk than other tobacco products;

''(B) a full statement of the components, ingredients, additives, and properties, and of the principle or principles of operation, of such tobacco product;

''(C) a full description of the methods used in, and the facilities and controls used for, the manufacture, processing, and, when relevant, packing and installation of, such tobacco product;

''(D) an identifying reference to any tobacco product standard under section 907 which would be applicable to any aspect of such tobacco product, and either adequate information to show that such aspect of such tobacco product fully meets such tobacco product standard or adequate information to justify any deviation from such standard;

''(E) such samples of such tobacco product and of components thereof as the Secretary may reasonably require;

''(F) specimens of the labeling proposed to be used for such tobacco product; and

''(G) such other information relevant to the subject matter of the application as the Secretary may require.

''(2) REFERRAL TO TOBACCO PRODUCTS SCIENTIFIC ADVISORY COMMITTEE.—Upon receipt of an application meeting the requirements set forth in paragraph (1), the Secretary—

''(A) may, on the Secretary's own initiative; or

''(B) may, upon the request of an applicant,

refer such application to the Tobacco Products Scientific Advisory Committee for reference and for submission (within such period as the Secretary may establish) of a report and recommendation respecting the application, together with all underlying data and the reasons or basis for the recommendation.

''(c) ACTION ON APPLICATION.—

''(1) DEADLINE.—

''(A) IN GENERAL.—As promptly as possible, but in no event later than 180 days after the receipt of an application under subsection (b), the Secretary, after considering the report and recommendation submitted under subsection (b)(2), shall—

''(i) issue an order that the new product may be introduced or delivered for introduction into interstate commerce if the Secretary finds that none of the grounds specified in paragraph (2) of this subsection applies; or

''(ii) issue an order that the new product may not be introduced or delivered for introduction into interstate commerce if the Secretary finds (and sets forth the basis for such finding as part of or accompanying such denial) that 1 or more grounds for denial specified in paragraph (2) of this subsection apply.

''(B) RESTRICTIONS ON SALE AND DISTRIBUTION.—An order under subparagraph (A)(i) may require that the sale and distribution of the tobacco product be restricted but only to the extent that the sale and distribution of a tobacco product may be restricted under a regulation under section 906(d).

''(2) DENIAL OF APPLICATION.—The Secretary shall deny an application submitted under subsection (b) if, upon the basis of the information submitted to the Secretary as part of the application and any other information before the Secretary with respect to such tobacco product, the Secretary finds that—

''(A) there is a lack of a showing that permitting such tobacco product to be marketed would be appropriate for the protection of the public health;

''(B) the methods used in, or the facilities or controls used for, the manufacture, processing, or packing of such tobacco product do not conform to the requirements of section 906(e);

''(C) based on a fair evaluation of all material facts, the proposed labeling is false or misleading in any particular; or

''(D) such tobacco product is not shown to conform in all respects to a tobacco product standard in effect under section 907, and there is a lack of adequate information to justify the deviation from such standard.

''(3) DENIAL INFORMATION.—Any denial of an application shall, insofar as the Secretary determines to be practicable, be accompanied by a statement informing the applicant of the measures required to remove such application from deniable form (which measures may include further research by the applicant in accordance with 1 or more protocols prescribed by the Secretary).

''(4) BASIS FOR FINDING.—For purposes of this section, the finding as to whether the marketing of a tobacco product for which an application has been submitted is appropriate for the protection of the public health shall be determined with respect to the risks and benefits to the population as a whole, including users and nonusers of the tobacco product, and taking into account—

''(A) the increased or decreased likelihood that existing users of tobacco products will stop using such products; and

''(B) the increased or decreased likelihood that those who do not use tobacco products will start using such products.

''(5) BASIS FOR ACTION.—

''(A) INVESTIGATIONS.—For purposes of paragraph (2)(A), whether permitting a tobacco product to be marketed would be appropriate for the protection of the public health shall, when appropriate, be determined on the basis of well-controlled investigations, which may include 1 or more clinical investigations by experts qualified by training and experience to evaluate the tobacco product.

''(B) OTHER EVIDENCE.—If the Secretary determines that there exists valid scientific evidence (other than evidence derived from investigations described in subparagraph (A)) which is sufficient to evaluate the tobacco product, the Secretary may authorize that the determination for purposes of paragraph (2)(A) be made on the basis of such evidence.

''(d) WITHDRAWAL AND TEMPORARY SUSPENSION.—

''(1) IN GENERAL.—The Secretary shall, upon obtaining, where appropriate, advice on scientific matters from the Tobacco Products Scientific Advisory Committee, and after due notice and opportunity for informal hearing for a tobacco product for which an order was issued under subsection (c)(1)(A)(i), issue an order withdrawing the order if the Secretary finds—

''(A) that the continued marketing of such tobacco product no longer is appropriate for the protection of the public health;

''(B) that the application contained or was accompanied by an untrue statement of a material fact;

''(C) that the applicant—

''(i) has failed to establish a system for maintaining records, or has repeatedly or deliberately failed to maintain records or to make reports, required by an applicable regulation under section 909;

''(ii) has refused to permit access to, or copying or verification of, such records as required by section 704; or

''(iii) has not complied with the requirements of section 905;

''(D) on the basis of new information before the Secretary with respect to such tobacco product, evaluated together with the evidence before the Secretary when the application was reviewed, that the methods used in, or the facilities and controls used for, the manufacture, processing, packing, or installation of such tobacco product do not conform with the requirements of section 906(e) and were not brought into conformity with such requirements within a reasonable time after receipt of written notice from the Secretary of nonconformity;

''(E) on the basis of new information before the Secretary, evaluated together with the evidence before the Secretary when the application was reviewed, that the labeling of such tobacco product, based on a fair evaluation of all material facts, is false or misleading in any particular and was not corrected within a reasonable time after receipt of written notice from the Secretary of such fact; or

''(F) on the basis of new information before the Secretary, evaluated together with the evidence before the Secretary when such order was issued, that such tobacco product is not shown to conform in all respects to a tobacco product standard which is in effect under section 907, compliance with which was a condition to the issuance of an order relating to the application, and that there is a lack of adequate information to justify the deviation from such standard.

''(2) APPEAL.—The holder of an application subject to an order issued under paragraph (1) withdrawing an order issued pursuant to subsection (c)(1)(A)(i) may, by petition filed on or before the 30th day after the date upon which such holder receives notice of such withdrawal, obtain review thereof in accordance with section 912.

''(3) TEMPORARY SUSPENSION.—If, after providing an opportunity for an informal hearing, the Secretary determines there is reasonable probability that the continuation of distribution of a tobacco product under an order would cause serious, adverse health consequences or death, that is greater than ordinarily caused by

tobacco products on the market, the Secretary shall by order temporarily suspend the authority of the manufacturer to market the product. If the Secretary issues such an order, the Secretary shall proceed expeditiously under paragraph (1) to withdraw such application.

''(e) SERVICE OF ORDER.—An order issued by the Secretary under this section shall be served—

''(1) in person by any officer or employee of the department designated by the Secretary; or

''(2) by mailing the order by registered mail or certified mail addressed to the applicant at the applicant's last known address in the records of the Secretary.

''(f) RECORDS.—

''(1) ADDITIONAL INFORMATION.—In the case of any tobacco product for which an order issued pursuant to subsection (c)(1)(A)(i) for an application filed under subsection (b) is in effect, the applicant shall establish and maintain such records, and make such reports to the Secretary, as the Secretary may by regulation, or by order with respect to such application, prescribe on the basis of a finding that such records and reports are necessary in order to enable the Secretary to determine, or facilitate a determination of, whether there is or may be grounds for withdrawing or temporarily suspending such order.

''(2) ACCESS TO RECORDS.—Each person required under this section to maintain records, and each person in charge of custody thereof, shall, upon request of an officer or employee designated by the Secretary, permit such officer or employee at all reasonable times to have access to and copy and verify such records.

''(g) INVESTIGATIONAL TOBACCO PRODUCT EXEMPTION FOR INVESTIGATIONAL USE.—The Secretary may exempt tobacco products intended for investigational use from the provisions of this chapter under such conditions as the Secretary may by regulation prescribe.

''SEC. 911. MODIFIED RISK TOBACCO PRODUCTS.

''(a) IN GENERAL.—No person may introduce or deliver for introduction into interstate commerce any modified risk tobacco product unless an order issued pursuant to subsection (g) is effective with respect to such product.

''(b) DEFINITIONS.—In this section:

''(1) MODIFIED RISK TOBACCO PRODUCT.—The term 'modified risk tobacco product' means any tobacco product that is sold or distributed for use to reduce harm or the risk of tobacco-related disease associated with commercially marketed tobacco products.

''(2) SOLD OR DISTRIBUTED.—

''(A) IN GENERAL.—With respect to a tobacco product, the term 'sold or distributed for use to reduce harm or the risk of tobacco-related disease associated with commercially marketed tobacco products' means a tobacco product—

''(i) the label, labeling, or advertising of which represents explicitly or implicitly that—

''(I) the tobacco product presents a lower risk of tobacco-related disease or is less harmful than one or more other commercially marketed tobacco products;

''(II) the tobacco product or its smoke contains a reduced level of a substance or presents a reduced exposure to a substance; or

''(III) the tobacco product or its smoke does not contain or is free of a substance;

''(ii) the label, labeling, or advertising of which uses the descriptors 'light', 'mild', or 'low' or similar descriptors; or

''(iii) the tobacco product manufacturer of which has taken any action directed to consumers through the media or otherwise, other than by means of the tobacco product's label, labeling, or advertising, after the date of enactment of the Family Smoking Prevention and Tobacco Control Act, respecting the product that would be reasonably expected to result in consumers believing that the tobacco product or its smoke may present a lower risk of disease or is less harmful than one or more commercially marketed tobacco products, or presents a reduced exposure to, or does not contain or is free of, a substance or substances.

''(B) LIMITATION.—No tobacco product shall be considered to be 'sold or distributed for use to reduce harm or the risk of tobacco-related disease associated with commercially marketed tobacco products', except as described in subparagraph (A).

''(C) SMOKELESS TOBACCO PRODUCT.—No smokeless tobacco product shall be considered to be 'sold or distributed for use to reduce harm or the risk of tobacco-related disease associated with commercially marketed tobacco products' solely because its label, labeling, or advertising uses the following phrases to describe such product and its use: 'smokeless tobacco', 'smokeless tobacco product', 'not consumed by smoking', 'does not produce smoke', 'smokefree', 'smoke-free', 'without smoke', 'no smoke', or 'not smoke'.

''(3) EFFECTIVE DATE.—The provisions of paragraph (2)(A)(ii) shall take effect 12 months after the date of enactment of the Family Smoking Prevention and Tobacco Control Act for those products whose label, labeling, or advertising contains the terms described in such paragraph on such date of enactment. The effective date shall be with respect to the date of manufacture, provided that, in any case, beginning 30 days after such effective date, a manufacturer shall not introduce into the domestic commerce of the United States any product, irrespective of the date of manufacture, that is not in conformance with paragraph (2)(A)(ii).

''(c) TOBACCO DEPENDENCE PRODUCTS.—A product that is intended to be used for the treatment of tobacco dependence, including smoking cessation, is not a modified risk tobacco product under this section if it has been approved as a drug or device by the Food and Drug Administration and is subject to the requirements of chapter V.

''(d) FILING.—Any person may file with the Secretary an application for a modified risk tobacco product. Such application shall include—

''(1) a description of the proposed product and any proposed advertising and labeling;

''(2) the conditions for using the product;

''(3) the formulation of the product;

''(4) sample product labels and labeling;

''(5) all documents (including underlying scientific information) relating to research findings conducted, supported, or possessed by the tobacco product manufacturer relating to the effect of the product on tobacco-related diseases and health-related conditions, including information both favorable and unfavorable to the ability of the product to reduce risk or exposure and relating to human health;

''(6) data and information on how consumers actually use the tobacco product; and

''(7) such other information as the Secretary may require.

''(e) PUBLIC AVAILABILITY.—The Secretary shall make the application described in subsection (d) publicly available (except matters in the application which are trade secrets or otherwise confidential, commercial information) and shall request comments by interested persons on the information contained in the application and on the label, labeling, and advertising accompanying such application.

''(f) ADVISORY COMMITTEE.—

''(1) IN GENERAL.—The Secretary shall refer to the Tobacco Products Scientific Advisory Committee any application submitted under this section.

''(2) RECOMMENDATIONS.—Not later than 60 days after the date an application is referred to the Tobacco Products Scientific Advisory Committee under paragraph (1), the Advisory Committee shall report its recommendations on the application to the Secretary.

''(g) MARKETING.—

''(1) MODIFIED RISK PRODUCTS.—Except as provided in paragraph (2), the Secretary shall, with respect to an application submitted under this section, issue an order that a modified risk product may be commercially marketed only if the Secretary determines that the applicant has demonstrated that such product, as it is actually used by consumers, will—

''(A) significantly reduce harm and the risk of tobacco-related disease to individual tobacco users; and

''(B) benefit the health of the population as a whole taking into account both users of tobacco products and persons who do not currently use tobacco products.

''(2) SPECIAL RULE FOR CERTAIN PRODUCTS.—

''(A) IN GENERAL.—The Secretary may issue an order that a tobacco product may be introduced or delivered for introduction into interstate commerce, pursuant to an application under this section, with respect to a tobacco product that may not be commercially marketed under paragraph (1) if the Secretary makes the findings required under this paragraph and determines that the applicant has demonstrated that—

''(i) such order would be appropriate to promote the public health;

''(ii) any aspect of the label, labeling, and advertising for such product that would cause the tobacco product to be a modified risk tobacco product under subsection (b) is limited to an explicit or implicit representation that such tobacco product or its smoke does not contain or is free of a substance or contains a reduced level of a substance, or presents a reduced exposure to a substance in tobacco smoke;

''(iii) scientific evidence is not available and, using the best available scientific methods, cannot be made available without conducting long-term epidemiological studies for an application to meet the standards set forth in paragraph (1); and

''(iv) the scientific evidence that is available without conducting long-term epidemiological studies demonstrates that a measurable and substantial reduction in morbidity or mortality among individual tobacco users is reasonably likely in subsequent studies.

''(B) ADDITIONAL FINDINGS REQUIRED.—To issue an order under subparagraph (A) the Secretary must also find that the applicant has demonstrated that—

''(i) the magnitude of the overall reductions in exposure to the substance or substances which are the subject of the application is substantial, such substance or substances are harmful, and the product as actually used exposes consumers to the specified reduced level of the substance or substances;

''(ii) the product as actually used by consumers will not expose them to higher levels of other harmful substances compared to the similar types of tobacco products then on the market unless such increases are minimal and the reasonably likely overall impact of use of the product remains a substantial and measurable reduction in overall morbidity and mortality among individual tobacco users;

''(iii) testing of actual consumer perception shows that, as the applicant proposes to label and market the product, consumers will not be misled into believing that the product—

''(I) is or has been demonstrated to be less harmful; or

''(II) presents or has been demonstrated to present less of a risk of disease than 1 or more other commercially marketed tobacco products; and

''(iv) issuance of an order with respect to the application is expected to benefit the health of the population as a whole taking into account both users of tobacco products and persons who do not currently use tobacco products.

''(C) CONDITIONS OF MARKETING.—

''(i) IN GENERAL.—Applications subject to an order under this paragraph shall be limited to a term of not more than 5 years, but may be renewed upon a finding by the Secretary that the requirements of this paragraph continue to be satisfied based on the filing of a new application.

''(ii) AGREEMENTS BY APPLICANT.—An order under this paragraph shall be conditioned on the applicant's agreement to conduct postmarket surveillance and studies and to submit to the Secretary the results of such surveillance and studies to determine the impact of the order on consumer perception, behavior, and health and to enable the Secretary to review the accuracy of the determinations upon which the order was based in accordance with a protocol approved by the Secretary.

''(iii) ANNUAL SUBMISSION.—The results of such postmarket surveillance and studies described in clause (ii) shall be submitted annually.

''(3) BASIS.—The determinations under paragraphs (1) and (2) shall be based on—

''(A) the scientific evidence submitted by the applicant; and

''(B) scientific evidence and other information that is made available to the Secretary.

''(4) BENEFIT TO HEALTH OF INDIVIDUALS AND OF POPULATION AS A WHOLE.—In making the determinations under paragraphs (1) and (2), the Secretary shall take into account—

''(A) the relative health risks to individuals of the tobacco product that is the subject of the application;

''(B) the increased or decreased likelihood that existing users of tobacco products who would otherwise stop using such products will switch to the tobacco product that is the subject of the application;

''(C) the increased or decreased likelihood that persons who do not use tobacco products will start using the tobacco product that is the subject of the application;

''(D) the risks and benefits to persons from the use of the tobacco product that is the subject of the application as compared to the use of products for smoking cessation approved under chapter V to treat nicotine dependence; and

''(E) comments, data, and information submitted by interested persons.

''(h) ADDITIONAL CONDITIONS FOR MARKETING.—

''(1) MODIFIED RISK PRODUCTS.—The Secretary shall require for the marketing of a product under this section that any advertising or labeling concerning modified risk products enable the public to comprehend the information concerning modified risk and to understand the relative significance of such information in the context of total health and in relation to all of the diseases and health-related conditions associated with the use of tobacco products.

''(2) COMPARATIVE CLAIMS.—

''(A) IN GENERAL.—The Secretary may require for the marketing of a product under this subsection that a claim comparing a tobacco product to 1 or more other commercially marketed tobacco products shall compare the tobacco product to a commercially marketed tobacco product that is representative of that type of tobacco product on the market (for example the average value of the top 3 brands of an established regular tobacco product).

''(B) QUANTITATIVE COMPARISONS.—The Secretary may also require, for purposes of subparagraph (A), that the percent (or fraction) of change and identity of the reference tobacco product and a quantitative comparison of the amount of the substance claimed to be reduced shall be stated in immediate proximity to the most prominent claim.

''(3) LABEL DISCLOSURE.—

''(A) IN GENERAL.—The Secretary may require the disclosure on the label of other substances in the tobacco product, or substances that may be produced by the consumption of that tobacco product, that may affect a disease or health-related condition or may increase the risk of other diseases or health-related conditions associated with the use of tobacco products.

''(B) CONDITIONS OF USE.—If the conditions of use of the tobacco product may affect the risk of the product to human health, the Secretary may require the labeling of conditions of use.

''(4) TIME.—An order issued under subsection (g)(1) shall be effective for a specified period of time.

''(5) ADVERTISING.—The Secretary may require, with respect to a product for which an applicant obtained an order under subsection (g)(1), that the product comply with requirements relating to advertising and promotion of the tobacco product.

''(i) POSTMARKET SURVEILLANCE AND STUDIES.—

''(1) IN GENERAL.—The Secretary shall require, with respect to a product for which an applicant obtained an order under subsection (g)(1), that the applicant conduct postmarket surveillance and studies for such a tobacco product to determine the impact of the order issuance on consumer perception, behavior, and health, to enable the Secretary to review the accuracy of the determinations upon which the order was based, and to provide information that the Secretary determines is otherwise necessary regarding the use or health risks involving the tobacco product. The results of postmarket surveillance and studies shall be submitted to the Secretary on an annual basis.

''(2) SURVEILLANCE PROTOCOL.—Each applicant required to conduct a surveillance of a tobacco product under paragraph (1) shall, within 30 days after receiving notice that the applicant is required to conduct such surveillance, submit, for the approval of the Secretary, a protocol for the required surveillance. The Secretary, within 60 days of the receipt of such protocol, shall determine if the principal investigator proposed to be used in the surveillance has sufficient qualifications and experience to conduct such surveillance and if such protocol will result in collection of the data or other information designated by the Secretary as necessary to protect the public health.

''(j) WITHDRAWAL OF AUTHORIZATION.—The Secretary, after an opportunity for an informal hearing, shall withdraw an order under subsection (g) if the Secretary determines that—

''(1) the applicant, based on new information, can no longer make the demonstrations required under subsection (g), or the Secretary can no longer make the determinations required under subsection (g);

''(2) the application failed to include material information or included any untrue statement of material fact;

''(3) any explicit or implicit representation that the product reduces risk or exposure is no longer valid, including if—

''(A) a tobacco product standard is established pursuant to section 907;

''(B) an action is taken that affects the risks presented by other commercially marketed tobacco products that were compared to the product that is the subject of the application; or

''(C) any postmarket surveillance or studies reveal that the order is no longer consistent with the protection of the public health;

''(4) the applicant failed to conduct or submit the postmarket surveillance and studies required under subsection (g)(2)(C)(ii) or subsection (i); or

''(5) the applicant failed to meet a condition imposed under subsection (h).

''(k) CHAPTER IV OR V.—A product for which the Secretary has issued an order pursuant to subsection (g) shall not be subject to chapter IV or V.

''(l) IMPLEMENTING REGULATIONS OR GUIDANCE.—

''(1) SCIENTIFIC EVIDENCE.—Not later than 2 years after the date of enactment of the Family Smoking Prevention and Tobacco Control Act, the Secretary shall issue regulations or guidance (or any combination thereof) on the scientific evidence required for assessment and ongoing review of modified risk tobacco products. Such regulations or guidance shall—

''(A) to the extent that adequate scientific evidence exists, establish minimum standards for scientific studies needed prior to issuing an order under subsection (g) to show that a substantial reduction in morbidity or mortality among individual tobacco users occurs for products described in subsection (g)(1) or is reasonably likely for products described in subsection (g)(2);

''(B) include validated biomarkers, intermediate clinical endpoints, and other feasible outcome measures, as appropriate;

''(C) establish minimum standards for postmarket studies, that shall include regular and long-term assessments of health outcomes and mortality, intermediate clinical endpoints, consumer perception of harm reduction, and the impact on quitting behavior and new use of tobacco products, as appropriate;

''(D) establish minimum standards for required postmarket surveillance, including ongoing assessments of consumer perception;

''(E) require that data from the required studies and surveillance be made available to the Secretary prior to the decision on renewal of a modified risk tobacco product; and

''(F) establish a reasonable timetable for the Secretary to review an application under this section.

''(2) CONSULTATION.—The regulations or guidance issued under paragraph (1) shall be developed in consultation with the Institute of Medicine, and with the input of other appropriate scientific and medical experts, on the design and conduct of such studies and surveillance.

''(3) REVISION.—The regulations or guidance under paragraph (1) shall be revised on a regular basis as new scientific information becomes available.

''(4) NEW TOBACCO PRODUCTS.—Not later than 2 years after the date of enactment of the Family Smoking Prevention and Tobacco Control Act, the Secretary shall issue a regulation or guidance that permits the filing of a single application for any tobacco product that is a new tobacco product under section 910 and which the applicant seeks to commercially market under this section.

''(m) DISTRIBUTORS.—Except as provided in this section, no distributor may take any action, after the date of enactment of the Family Smoking Prevention and Tobacco Control Act, with respect to a tobacco product that would reasonably be expected to result in consumers believing that the tobacco product or its smoke may present a lower risk of disease or is less harmful than one or more commercially marketed tobacco products, or presents a reduced exposure to, or does not contain or is free of, a substance or substances.

''SEC. 912. JUDICIAL REVIEW.

''(a) RIGHT TO REVIEW.—

''(1) IN GENERAL.—Not later than 30 days after—

''(A) the promulgation of a regulation under section 907 establishing, amending, or revoking a tobacco product standard; or

''(B) a denial of an application under section 910(c),

any person adversely affected by such regulation or denial may file a petition for judicial review of such regulation or denial with the United States Court of Appeals for the District of Columbia or for the circuit in which such person resides or has their principal place of business.

''(2) REQUIREMENTS.—

''(A) COPY OF PETITION.—A copy of the petition filed under paragraph (1) shall be transmitted by the clerk of the court involved to the Secretary.

''(B) RECORD OF PROCEEDINGS.—On receipt of a petition under subparagraph (A), the Secretary shall file in the court in which such petition was filed—

''(i) the record of the proceedings on which the regulation or order was based; and

''(ii) a statement of the reasons for the issuance of such a regulation or order.

''(C) DEFINITION OF RECORD.—In this section, the term 'record' means—

''(i) all notices and other matter published in the Federal Register with respect to the regulation or order reviewed;

''(ii) all information submitted to the Secretary with respect to such regulation or order;

''(iii) proceedings of any panel or advisory committee with respect to such regulation or order;

''(iv) any hearing held with respect to such regulation or order; and

''(v) any other information identified by the Secretary, in the administrative proceeding held with respect to such regulation or order, as being relevant to such regulation or order.

''(b) STANDARD OF REVIEW.—Upon the filing of the petition under subsection (a) for judicial review of a regulation or order, the court shall have jurisdiction to review the regulation or order in accordance with chapter 7 of title 5, United States Code, and to grant appropriate relief, including interim relief, as provided for in such chapter. A regulation or denial described in subsection (a) shall be reviewed in accordance with section 706(2)(A) of title 5, United States Code.

''(c) FINALITY OF JUDGMENT.—The judgment of the court affirming or setting aside, in whole or in part, any regulation or order shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification, as provided in section 1254 of title 28, United States Code.

''(d) OTHER REMEDIES.—The remedies provided for in this section shall be in addition to, and not in lieu of, any other remedies provided by law.

''(e) REGULATIONS AND ORDERS MUST RECITE BASIS IN RECORD.—To facilitate judicial review, a regulation or order issued under section 906, 907, 908, 909, 910, or 916 shall contain a statement of the reasons for the issuance of such regulation or order in the record of the proceedings held in connection with its issuance.

''SEC. 913. EQUAL TREATMENT OF RETAIL OUTLETS.

''The Secretary shall issue regulations to require that retail establishments for which the predominant business is the sale of tobacco products comply with any advertising restrictions applicable to retail establishments accessible to individuals under the age of 18.

''SEC. 914. JURISDICTION OF AND COORDINATION WITH THE FEDERAL TRADE COMMISSION.

''(a) JURISDICTION.—

''(1) IN GENERAL.—Except where expressly provided in this chapter, nothing in this chapter shall be construed as limiting or diminishing the authority of the Federal Trade Commission to enforce the laws under its jurisdiction with respect to the advertising, sale, or distribution of tobacco products.

''(2) ENFORCEMENT.—Any advertising that violates this chapter or a provision of the regulations referred to in section 102 of the Family Smoking Prevention and Tobacco Control Act, is an unfair or deceptive act or practice under section 5(a) of the Federal Trade Commission Act and shall be considered a violation of a rule promulgated under section 18 of that Act.

''(b) COORDINATION.—With respect to the requirements of section 4 of the Federal Cigarette Labeling and Advertising Act and section 3 of the Comprehensive Smokeless Tobacco Health Education Act of 1986—

''(1) the Chairman of the Federal Trade Commission shall coordinate with the Secretary concerning the enforcement of such Act as such enforcement relates to unfair or deceptive acts or practices in the advertising of cigarettes or smokeless tobacco; and

''(2) the Secretary shall consult with the Chairman of such Commission in revising the label statements and requirements under such sections.

''SEC. 915. REGULATION REQUIREMENT.

''(a) TESTING, REPORTING, AND DISCLOSURE.—Not later than 36 months after the date of enactment of the Family Smoking Prevention and Tobacco Control Act, the Secretary shall promulgate regulations under this Act that meet the requirements of subsection (b).

''(b) CONTENTS OF RULES.—The regulations promulgated under subsection (a)—

''(1) shall require testing and reporting of tobacco product constituents, ingredients, and additives, including smoke constituents, by brand and subbrand that the Secretary determines should be tested to protect the public health, provided that, for purposes of the testing requirements of this paragraph, tobacco products manufactured and sold by a single tobacco product manufacturer that are identical in all respects except the labels, packaging design, logo, trade dress, trademark, brand name, or any combination thereof, shall be considered as a single brand; and

''(2) may require that tobacco product manufacturers, packagers, or importers make disclosures relating to the results of the testing of tar and nicotine through labels or advertising or other appropriate means, and make disclosures regarding the results of the testing of other constituents, including smoke constituents, ingredients, or additives, that the Secretary determines should be disclosed to the public to protect the public health and will not mislead consumers about the risk of tobacco-related disease.

''(c) AUTHORITY.—The Secretary shall have the authority under this chapter to conduct or to require the testing, reporting, or disclosure of tobacco product constituents, including smoke constituents.

''(d) SMALL TOBACCO PRODUCT MANUFACTURERS.—

''(1) FIRST COMPLIANCE DATE.—The initial regulations promulgated under subsection (a) shall not impose requirements on small tobacco product manufacturers before the later of—

''(A) the end of the 2-year period following the final promulgation of such regulations; and

''(B) the initial date set by the Secretary for compliance with such regulations by manufacturers that are not small tobacco product manufacturers.

''(2) TESTING AND REPORTING INITIAL COMPLIANCE PERIOD.—

''(A) 4-YEAR PERIOD.—The initial regulations promulgated under subsection (a) shall give each small tobacco product manufacturer a 4-year period over which to conduct testing and reporting for all of its tobacco products. Subject to paragraph (1), the end of the first year of such 4-year period shall coincide with the initial date of compliance under this section set by the Secretary with respect to manufacturers that are not small tobacco product manufacturers or the end of the 2-year period following the final promulgation of such regulations, as described in paragraph (1)(A). A small tobacco product manufacturer shall be required—

''(i) to conduct such testing and reporting for 25 percent of its tobacco products during each year of such 4-year period; and

''(ii) to conduct such testing and reporting for its largest-selling tobacco products (as determined by the Secretary) before its other tobacco products, or in such other order of priority as determined by the Secretary.

''(B) CASE-BY-CASE DELAY.—Notwithstanding subparagraph (A), the Secretary may, on a case-by-case basis, delay the date by which an individual small tobacco product manufacturer must conduct testing and reporting for its tobacco products under this section based upon a showing of undue hardship to such manufacturer. Notwithstanding the preceding sentence, the Secretary shall not extend the deadline for a small tobacco product manufacturer to conduct testing and reporting for all of its tobacco products beyond a total of 5 years after the initial date of compliance under this section set by the Secretary with respect to manufacturers that are not small tobacco product manufacturers.

''(3) SUBSEQUENT AND ADDITIONAL TESTING AND REPORTING.—The regulations promulgated under subsection (a) shall provide that, with respect to any subsequent or additional testing and reporting of tobacco products required under this section, such testing and reporting by a small tobacco product manufacturer shall be conducted in accordance with the timeframes described in paragraph (2)(A), except that, in the case of a new product, or if there has been a modification described in section 910(a)(1)(B) of any product of a small tobacco product manufacturer since the last testing and reporting required under this section, the Secretary shall require that any subsequent or additional testing and reporting be conducted in accordance with the same timeframe applicable to manufacturers that are not small tobacco product manufacturers.

''(4) JOINT LABORATORY TESTING SERVICES.—The Secretary shall allow any 2 or more small tobacco product manufacturers to join together to purchase laboratory testing services required by this section on a group basis in order to ensure that such manufacturers receive access to, and fair pricing of, such testing services.

''(e) EXTENSIONS FOR LIMITED LABORATORY CAPACITY.—

''(1) IN GENERAL.—The regulations promulgated under subsection (a) shall provide that a small tobacco product manufacturer shall not be considered to be in violation of this section before the deadline applicable under paragraphs (3) and (4), if—

''(A) the tobacco products of such manufacturer are in compliance with all other requirements of this chapter; and

''(B) the conditions described in paragraph (2) are met.

''(2) CONDITIONS.—Notwithstanding the requirements of this section, the Secretary may delay the date by which a small tobacco product manufacturer must be in compliance with the testing and reporting required by this section until such time as the testing is reported if, not later than 90 days before the deadline for reporting in accordance with this section, a small tobacco product manufacturer provides evidence to the Secretary demonstrating that—

''(A) the manufacturer has submitted the required products for testing to a laboratory and has done so sufficiently in advance of the deadline to create a reasonable expectation of completion by the deadline;

''(B) the products currently are awaiting testing by the laboratory; and

''(C) neither that laboratory nor any other laboratory is able to complete testing by the deadline at customary, nonexpedited testing fees.

''(3) EXTENSION.—The Secretary, taking into account the laboratory testing capacity that is available to tobacco product manufacturers, shall review and verify the evidence submitted by a small tobacco product manufacturer in accordance with paragraph (2). If the Secretary finds that the conditions described in such paragraph are met, the Secretary shall notify the small tobacco product manufacturer that the manufacturer shall not be considered to be in violation of the testing and reporting requirements of this section until the testing is reported or until 1 year after the reporting deadline has passed, whichever occurs sooner. If, however, the Secretary has not made a finding before the reporting deadline, the manufacturer shall not be considered to be in violation of such requirements until the Secretary finds that the conditions described in paragraph (2) have not been met, or until 1 year after the reporting deadline, whichever occurs sooner.

''(4) ADDITIONAL EXTENSION.—In addition to the time that may be provided under paragraph (3), the Secretary may provide further extensions of time, in increments of no more than 1 year, for required testing and reporting to occur if the Secretary determines, based on evidence properly and timely submitted by a small tobacco product manufacturer in accordance with paragraph (2), that a lack of available laboratory capacity prevents the manufacturer from

completing the required testing during the period described in paragraph (3).

''(f) RULE OF CONSTRUCTION.—Nothing in subsection (d) or (e) shall be construed to authorize the extension of any deadline, or to otherwise affect any timeframe, under any provision of this Act or the Family Smoking Prevention and Tobacco Control Act other than this section.

"SEC. 916. PRESERVATION OF STATE AND LOCAL AUTHORITY.

''(a) IN GENERAL.—

''(1) PRESERVATION.—Except as provided in paragraph (2)(A), nothing in this chapter, or rules promulgated under this chapter, shall be construed to limit the authority of a Federal agency (including the Armed Forces), a State or political subdivision of a State, or the government of an Indian tribe to enact, adopt, promulgate, and enforce any law, rule, regulation, or other measure with respect to tobacco products that is in addition to, or more stringent than, requirements established under this chapter, including a law, rule, regulation, or other measure relating to or prohibiting the sale, distribution, possession, exposure to, access to, advertising and promotion of, or use of tobacco products by individuals of any age, information reporting to the State, or measures relating to fire safety standards for tobacco products. No provision of this chapter shall limit or otherwise affect any State, tribal, or local taxation of tobacco products.

''(2) PREEMPTION OF CERTAIN STATE AND LOCAL REQUIREMENTS.—

''(A) IN GENERAL.—No State or political subdivision of a State may establish or continue in effect with respect to a tobacco product any requirement which is different from, or in addition to, any requirement under the provisions of this chapter relating to tobacco product standards, premarket review, adulteration, misbranding, labeling, registration, good manufacturing standards, or modified risk tobacco products.

''(B) EXCEPTION.—Subparagraph (A) does not apply to requirements relating to the sale, distribution, possession, information reporting to the State, exposure to, access to, the advertising and promotion of, or use of, tobacco products by individuals of any age, or relating to fire safety standards for tobacco products. Information disclosed to a State under subparagraph (A) that is exempt from disclosure under section 552(b)(4) of title 5, United States Code, shall be treated as a trade secret and confidential information by the State.

''(b) RULE OF CONSTRUCTION REGARDING PRODUCT LIABILITY.—No provision of this chapter relating to a tobacco product shall be construed to modify or otherwise affect any action or the liability of any person under the product liability law of any State.

"SEC. 917. TOBACCO PRODUCTS SCIENTIFIC ADVISORY COMMITTEE.

''(a) ESTABLISHMENT.—Not later than 6 months after the date of enactment of the Family Smoking Prevention and Tobacco Control Act, the Secretary shall establish a 12-member advisory committee, to be known as the Tobacco Products Scientific Advisory Committee (in this section referred to as the 'Advisory Committee').

''(b) MEMBERSHIP.—

''(1) IN GENERAL.—

''(A) MEMBERS.—The Secretary shall appoint as members of the Tobacco Products Scientific Advisory Committee individuals who are technically qualified by training and experience in medicine, medical ethics, science, or technology involving the manufacture, evaluation, or use of tobacco products, who are of appropriately diversified professional backgrounds. The committee shall be composed of—

''(i) 7 individuals who are physicians, dentists, scientists, or health care professionals practicing in the area of oncology, pulmonology, cardiology, toxicology, pharmacology, addiction, or any other relevant specialty;

''(ii) 1 individual who is an officer or employee of a State or local government or of the Federal Government;

''(iii) 1 individual as a representative of the general public;

''(iv) 1 individual as a representative of the interests of the tobacco manufacturing industry;

''(v) 1 individual as a representative of the interests of the small business tobacco manufacturing industry, which position may be filled on a rotating, sequential basis by representatives of different small business tobacco manufacturers based on areas of expertise relevant to the topics being considered by the Advisory Committee; and

''(vi) 1 individual as a representative of the interests of the tobacco growers.

''(B) NONVOTING MEMBERS.—The members of the committee appointed under clauses (iv), (v), and (vi) of subparagraph (A) shall serve as consultants to those described in clauses (i) through (iii) of subparagraph (A) and shall be nonvoting representatives.

''(C) CONFLICTS OF INTEREST.—No members of the committee, other than members appointed pursuant to clauses (iv), (v), and (vi) of subparagraph (A) shall, during the member's tenure on the committee or for the 18-month period prior to becoming such a member, receive any salary, grants, or other payments or support from any business that manufactures, distributes, markets, or sells cigarettes or other tobacco products.

''(2) LIMITATION.—The Secretary may not appoint to the Advisory Committee any individual who is in the regular full-time employ of the Food and Drug Administration or any agency responsible for the enforcement of this Act. The Secretary may appoint Federal officials as ex officio members.

''(3) CHAIRPERSON.—The Secretary shall designate 1 of the members appointed under clauses (i), (ii), and (iii) of paragraph (1)(A) to serve as chairperson.

''(c) DUTIES.—The Tobacco Products Scientific Advisory Committee shall provide advice, information, and recommendations to the Secretary—

''(1) as provided in this chapter;

''(2) on the effects of the alteration of the nicotine yields from tobacco products;

''(3) on whether there is a threshold level below which nicotine yields do not produce dependence on the tobacco product involved; and

''(4) on its review of other safety, dependence, or health issues relating to tobacco products as requested by the Secretary.

''(d) COMPENSATION; SUPPORT; FACA.—

''(1) COMPENSATION AND TRAVEL.—Members of the Advisory Committee who are not officers or employees of the United States, while attending conferences or meetings of the committee or otherwise engaged in its business, shall be entitled to receive compensation at rates to be fixed by the Secretary, which may not exceed the daily equivalent of the rate in effect under the Senior Executive Schedule under section 5382 of title 5, United States Code, for each day (including travel time) they are so engaged; and while so serving away from their homes or regular places of business each member may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code, for persons in the Government service employed intermittently.

''(2) ADMINISTRATIVE SUPPORT.—The Secretary shall furnish the Advisory Committee clerical and other assistance.

''(3) NONAPPLICATION OF FACA.—Section 14 of the Federal Advisory Committee Act does not apply to the Advisory Committee.

''(e) PROCEEDINGS OF ADVISORY PANELS AND COMMITTEES.—The Advisory Committee shall make and maintain a transcript of any proceeding of the panel or committee. Each such panel and committee shall delete from any transcript made under this subsection information which is exempt from disclosure under section 552(b) of title 5, United States Code.

"SEC. 918. DRUG PRODUCTS USED TO TREAT TOBACCO DEPENDENCE.

''(a) IN GENERAL.—The Secretary shall—

''(1) at the request of the applicant, consider designating products for smoking cessation, including nicotine replacement products as fast track research and approval products within the meaning of section 506;

''(2) consider approving the extended use of nicotine replacement products (such as nicotine patches, nicotine gum, and nicotine lozenges) for the treatment of tobacco dependence; and

''(3) review and consider the evidence for additional indications for nicotine replacement products, such as for craving relief or relapse prevention.

''(b) REPORT ON INNOVATIVE PRODUCTS.—

''(1) IN GENERAL.—Not later than 3 years after the date of enactment of the Family Smoking Prevention and Tobacco Control Act, the Secretary, after consultation with recognized scientific, medical, and public health experts (including both Federal agencies and nongovernmental entities, the Institute of Medicine of the National Academy of Sciences, and the Society for Research on Nicotine and Tobacco), shall submit to the Congress a report that examines how best to regulate, promote, and encourage the development of innovative products and treatments (including nicotine-based and nonnicotine-based products and treatments) to better achieve, in a manner that best protects and promotes the public health—

''(A) total abstinence from tobacco use;

''(B) reductions in consumption of tobacco; and

''(C) reductions in the harm associated with continued tobacco use.

''(2) RECOMMENDATIONS.—The report under paragraph (1) shall include the recommendations of the Secretary on how the Food and Drug Administration should coordinate and facilitate the exchange of information on such innovative products and treatments among relevant offices and centers within the Administration and within the National Institutes of Health, the Centers for Disease Control and Prevention, and other relevant agencies.

"SEC. 919. USER FEES.

''(a) ESTABLISHMENT OF QUARTERLY FEE.—Beginning on the date of enactment of the Family Smoking Prevention and Tobacco Control Act, the Secretary shall in accordance with this section assess user fees on, and collect such fees from, each manufacturer and importer of tobacco products subject to this chapter. The fees shall be assessed and collected with respect to each quarter of each fiscal year, and the total amount assessed and collected for a fiscal year shall be the amount specified in subsection (b)(1) for such year, subject to subsection (c).

''(b) ASSESSMENT OF USER FEE.—

''(1) AMOUNT OF ASSESSMENT.—The total amount of user fees authorized to be assessed and collected under subsection (a) for a fiscal year is the following, as applicable to the fiscal year involved:

''(A) For fiscal year 2009, $85,000,000 (subject to subsection (e)).

''(B) For fiscal year 2010, $235,000,000.

''(C) For fiscal year 2011, $450,000,000.

''(D) For fiscal year 2012, $477,000,000.

''(E) For fiscal year 2013, $505,000,000.

''(F) For fiscal year 2014, $534,000,000.

''(G) For fiscal year 2015, $566,000,000.

''(H) For fiscal year 2016, $599,000,000.

''(I) For fiscal year 2017, $635,000,000.

''(J) For fiscal year 2018, $672,000,000.

''(K) For fiscal year 2019 and each subsequent fiscal year, $712,000,000.

''(2) ALLOCATIONS OF ASSESSMENT BY CLASS OF TOBACCO PRODUCTS.—

''(A) IN GENERAL.—The total user fees assessed and collected under subsection (a) each fiscal year with respect to each class of tobacco products shall be an amount that is equal to the applicable percentage of each class for the fiscal year multiplied by the amount specified in paragraph (1) for the fiscal year.

''(B) APPLICABLE PERCENTAGE.—

''(i) IN GENERAL.—For purposes of subparagraph (A), the applicable percentage for a fiscal year for each of the following classes of tobacco products shall be determined in accordance with clause (ii):

''(I) Cigarettes.

''(II) Cigars, including small cigars and cigars other than small cigars.

''(III) Snuff.

''(IV) Chewing tobacco.

''(V) Pipe tobacco.

''(VI) Roll-your-own tobacco.

''(ii) ALLOCATIONS.—The applicable percentage of each class of tobacco product described in clause (i) for a fiscal year shall be the percentage determined under section 625(c) of Public Law 108–357 for each such class of product for such fiscal year.

''(iii) REQUIREMENT OF REGULATIONS.—Notwithstanding clause (ii), no user fees shall be assessed on a class of tobacco products unless such class of tobacco products is listed in section 901(b) or is deemed by the Secretary in a regulation under section 901(b) to be subject to this chapter.

''(iv) REALLOCATIONS.—In the case of a class of tobacco products that is not listed in section 901(b) or deemed by the Secretary in a regulation under section 901(b) to be subject to this chapter, the amount of user fees that would otherwise be assessed to such class of tobacco products shall be reallocated to the classes of tobacco products that are subject to this chapter in the same manner and based on the same relative percentages otherwise determined under clause (ii).

''(3) DETERMINATION OF USER FEE BY COMPANY.—

''(A) IN GENERAL.—The total user fee to be paid by each manufacturer or importer of a particular class of tobacco products shall be determined for each quarter by multiplying—

''(i) such manufacturer's or importer's percentage share as determined under paragraph (4); by

''(ii) the portion of the user fee amount for the current quarter to be assessed on all manufacturers and importers of such class of tobacco products as determined under paragraph (2).

''(B) NO FEE IN EXCESS OF PERCENTAGE SHARE.—No manufacturer or importer of tobacco products shall be required to pay a user fee in excess of the percentage share of such manufacturer or importer.

''(4) ALLOCATION OF ASSESSMENT WITHIN EACH CLASS OF TOBACCO PRODUCT.—The percentage share of each manufacturer or importer of a particular class of tobacco products of the total user fee to be paid by all manufacturers or importers of that class of tobacco products shall be the percentage determined for purposes of allocations under subsections (e) through (h) of section 625 of Public Law 108–357.

''(5) ALLOCATION FOR CIGARS.—Notwithstanding paragraph (4), if a user fee assessment is imposed on cigars, the percentage share of each manufacturer or importer of cigars shall be based on the excise taxes paid by such manufacturer or importer during the prior fiscal year.

''(6) TIMING OF ASSESSMENT.—The Secretary shall notify each manufacturer and importer of tobacco products subject to this section of the amount of the quarterly assessment imposed on such manufacturer or importer under this subsection for each quarter of each fiscal year. Such notifications shall occur not later than 30 days prior to the end of the quarter for which such assessment is made, and payments of all assessments shall be made by the last day of the quarter involved.

''(7) MEMORANDUM OF UNDERSTANDING.—

''(A) IN GENERAL.—The Secretary shall request the appropriate Federal agency to enter into a memorandum of understanding that provides for the regular and timely transfer from the head of such agency to the Secretary of the information described in paragraphs (2)(B)(ii) and (4) and all necessary information regarding all tobacco product manufacturers and importers required to pay user fees. The Secretary shall maintain all disclosure restrictions established by the head of such agency regarding the information provided under the memorandum of understanding.

''(B) ASSURANCES.—Beginning not later than fiscal year 2015, and for each subsequent fiscal year, the Secretary shall ensure that the Food and Drug Administration is able to determine the applicable percentages described in paragraph (2) and the percentage shares described in paragraph (4). The Secretary may carry out this subparagraph by entering into a contract with the head of the Federal agency referred to in subparagraph (A) to continue to provide the necessary information.

''(c) CREDITING AND AVAILABILITY OF FEES.—

''(1) IN GENERAL.—Fees authorized under subsection (a) shall be collected and available for obligation only to the extent and in the amount provided in advance in appropriations Acts, subject to paragraph (2)(D). Such fees are authorized to remain available until expended. Such sums as may be necessary may be transferred from the Food and Drug Administration salaries and expenses appropriation account without fiscal year limitation to such appropriation account for salaries and expenses with such fiscal year limitation.

''(2) AVAILABILITY.—

''(A) IN GENERAL.—Fees appropriated under paragraph (3) are available only for the purpose of paying the costs of the activities of the Food and Drug Administration related to the regulation of tobacco products under this chapter and the Family Smoking Prevention and Tobacco Control Act (referred to in this subsection as 'tobacco regulation activities'), except that such fees may be used for the reimbursement specified in subparagraph (C).

''(B) PROHIBITION AGAINST USE OF OTHER FUNDS.—

''(i) IN GENERAL.—Except as provided in clause (ii), fees collected under subsection (a) are the only funds authorized to be made available for tobacco regulation activities.

''(ii) STARTUP COSTS.—Clause (i) does not apply until October 1, 2009. Until such date, any amounts available to the Food and Drug Administration (excluding user fees) shall be available and allocated as needed to pay the costs of tobacco regulation activities.

''(C) REIMBURSEMENT OF START-UP AMOUNTS.—

''(i) IN GENERAL.—Any amounts allocated for the start-up period pursuant to subparagraph (B)(ii) shall be reimbursed through any appropriated fees collected under subsection (a), in such manner as the Secretary determines appropriate to ensure that such allocation results in no net change in the total amount of funds otherwise available, for the period from October 1, 2008, through September 30, 2010, for Food and Drug Administration programs and activities (other than tobacco regulation activities) for such period.

''(ii) TREATMENT OF REIMBURSED AMOUNTS.—Amounts reimbursed under clause (i) shall be available for the programs and activities for which funds allocated for the start-up period were available, prior to such allocation, until September 30, 2010, notwithstanding any otherwise applicable limits on amounts for such programs or activities for a fiscal year.

''(D) FEE COLLECTED DURING START-UP PERIOD.—Notwithstanding the first sentence of paragraph (1), fees under subsection (a) may be collected through September 30, 2009 under subparagraph (B)(ii) and shall be available for obligation and remain available until expended. Such offsetting collections shall be credited to the salaries and expenses account of the Food and Drug Administration.

''(E) OBLIGATION OF START-UP COSTS IN ANTICIPATION OF AVAILABLE FEE COLLECTIONS.—Notwithstanding any other provision of law, following the enactment of an appropriation for fees under this section for fiscal year 2010, or any portion thereof, obligations for costs of tobacco regulation activities during the start-up period may be incurred in anticipation of the receipt of offsetting fee collections through procedures specified in section 1534 of title 31, United States Code.

''(3) AUTHORIZATION OF APPROPRIATIONS.—For fiscal year 2009 and each subsequent fiscal year, there is authorized to be appropriated for fees under this section an amount equal to the amount specified in subsection (b)(1) for the fiscal year.

''(d) COLLECTION OF UNPAID FEES.—In any case where the Secretary does not receive payment of a fee assessed under subsection (a) within 30 days after it is due, such fee shall be treated as a claim of the United States Government subject to subchapter II of chapter 37 of title 31, United States Code.

''(e) APPLICABILITY TO FISCAL YEAR 2009.—If the date of enactment of the Family Smoking Prevention and Tobacco Control Act occurs during fiscal year 2009, the following applies, subject to subsection (c):

''(1) The Secretary shall determine the fees that would apply for a single quarter of such fiscal year according to the application of subsection (b) to the amount specified in paragraph (1)(A) of such subsection (referred to in this subsection as the 'quarterly fee amounts').

''(2) For the quarter in which such date of enactment occurs, the amount of fees assessed shall be a pro rata amount, determined according to the number of days remaining in the quarter (including such date of enactment) and according to the daily equivalent of the quarterly fee amounts. Fees assessed under the preceding sentence shall not be collected until the next quarter.

''(3) For the quarter following the quarter to which paragraph (2) applies, the full quarterly fee amounts shall be assessed and collected, in addition to collection of the pro rata fees assessed under paragraph (2).''.

(c) CONFORMING AMENDMENT.—Section 9(1) of the Comprehensive Smokeless Tobacco Health Education Act of 1986 (15 U.S.C. 4408(i)) is amended to read as follows:

''(1) The term 'smokeless tobacco' has the meaning given such term by section 900(18) of the Federal Food, Drug, and Cosmetic Act.''.

SEC. 102. FINAL RULE.

(a) CIGARETTES AND SMOKELESS TOBACCO.—

(1) IN GENERAL.—On the first day of publication of the Federal Register that is 180 days or more after the date of enactment of this Act, the Secretary of Health and Human Services shall publish in the Federal Register a final rule regarding cigarettes and smokeless tobacco, which—

(A) is deemed to be issued under chapter 9 of the Federal Food, Drug, and Cosmetic Act, as added by section 101 of this division; and

(B) shall be deemed to be in compliance with all applicable provisions of chapter 5 of title 5, United States Code, and all other provisions of law relating to rulemaking procedures.

(2) CONTENTS OF RULE.—Except as provided in this subsection, the final rule published under paragraph (1), shall be identical in its provisions to part 897 of the regulations promulgated by the Secretary of Health and Human Services in the August 28, 1996, issue of the Federal Register (61 Fed. Reg. 44615–44618). Such rule shall—

(A) provide for the designation of jurisdictional authority that is in accordance with this subsection in accordance with this division and the amendments made by this division;

(B) strike Subpart C—Labels and section 897.32(c);

(C) strike paragraphs (a), (b), and (i) of section 897.3 and insert definitions of the terms ''cigarette'', ''cigarette tobacco'', and ''smokeless tobacco'' as defined in section 900 of the Federal Food, Drug, and Cosmetic Act;

(D) insert ''or roll-your-own paper'' in section 897.34(a) after ''other than cigarettes or smokeless tobacco'';

(E) include such modifications to section 897.30(b), if any, that the Secretary determines are appropriate in light of governing First Amendment case law, including the decision of the Supreme Court of the United States in Lorillard Tobacco Co. v. Reilly (533 U.S. 525 (2001));

(F) become effective on the date that is 1 year after the date of enactment of this Act; and

(G) amend paragraph (d) of section 897.16 to read as follows:

''(d)(1) Except as provided in subparagraph (2), no manufacturer, distributor, or retailer may distribute or cause to be distributed any free samples of cigarettes, smokeless tobacco, or other tobacco products (as such term is defined in section 201 of the Federal Food, Drug, and Cosmetic Act).

''(2)(A) Subparagraph (1) does not prohibit a manufacturer, distributor, or retailer from distributing or causing to be distributed free samples of smokeless tobacco in a qualified adult-only facility.

''(B) This subparagraph does not affect the authority of a State or local government to prohibit or otherwise restrict the distribution of free samples of smokeless tobacco.

''(C) For purposes of this paragraph, the term 'qualified adult-only facility' means a facility or restricted area that—

''(i) requires each person present to provide to a law enforcement officer (whether on or off duty) or to a security guard licensed by a governmental entity government-issued identification showing a photograph and at least the minimum age established by applicable law for the purchase of smokeless tobacco;

''(ii) does not sell, serve, or distribute alcohol;

''(iii) is not located adjacent to or immediately across from (in any direction) a space that is used primarily for youth-oriented marketing, promotional, or other activities;

''(iv) is a temporary structure constructed, designated, and operated as a distinct enclosed area for the purpose of distributing free samples of smokeless tobacco in accordance with this subparagraph;

''(v) is enclosed by a barrier that—

''(I) is constructed of, or covered with, an opaque material (except for entrances and exits);

''(II) extends from no more than 12 inches above the ground or floor (which area at the bottom of the barrier must be covered with material that restricts visibility but may allow airflow) to at least 8 feet above the ground or floor (or to the ceiling); and

''(III) prevents persons outside the qualified adult-only facility from seeing into the qualified adult-only facility, unless they make unreasonable efforts to do so; and

''(vi) does not display on its exterior—

''(I) any tobacco product advertising;

''(II) a brand name other than in conjunction with words for an area or enclosure to identify an adult-only facility; or

''(III) any combination of words that would imply to a reasonable observer that the manufacturer, distributor, or retailer has a sponsorship that would violate section 897.34(c).

''(D) Distribution of samples of smokeless tobacco under this subparagraph permitted to be taken out of the qualified adult-only facility shall be limited to 1 package per adult consumer containing no more than 0.53 ounces (15 grams) of smokeless tobacco. If such package of smokeless tobacco contains individual portions of smokeless tobacco, the individual portions of smokeless tobacco shall not exceed 8 individual portions and the collective weight of such individual portions shall not exceed 0.53 ounces (15 grams). Any manufacturer, distributor, or retailer who distributes or causes to be distributed free samples also shall take reasonable steps to ensure that the above amounts are limited to one such package per adult consumer per day.

''(3) Notwithstanding subparagraph (2), no manufacturer, distributor, or retailer may distribute or cause to be distributed any free samples of smokeless tobacco—

''(A) to a sports team or entertainment group; or

''(B) at any football, basketball, baseball, soccer, or hockey event or any other sporting or entertainment event determined by the Secretary to be covered by this subparagraph.

''(4) The Secretary shall implement a program to ensure compliance with this paragraph and submit a report to the Congress on such compliance not later than 18 months after the date of enactment of the Family Smoking Prevention and Tobacco Control Act.

''(5) Nothing in this paragraph shall be construed to authorize any person to distribute or cause to be distributed any sample of a tobacco product to any individual who has not attained the minimum age established by applicable law for the purchase of such product.''.

(3) AMENDMENTS TO RULE.—Prior to making amendments to the rule published under paragraph (1), the Secretary shall promulgate a proposed rule in accordance with chapter 5 of title 5, United States Code.

(4) RULE OF CONSTRUCTION.—Except as provided in paragraph (3), nothing in this section shall be construed to limit the authority of the Secretary to amend, in accordance with chapter 5 of title 5, United States Code, the regulation promulgated pursuant to this section, including the provisions of such regulation relating to distribution of free samples.

(5) ENFORCEMENT OF RETAIL SALE PROVISIONS.—The Secretary of Health and Human Services shall ensure that the provisions of this division, the amendments made by this division, and the implementing regulations (including such provisions, amendments, and regulations relating to the retail sale of tobacco products) are enforced with respect to the United States and Indian tribes.

(6) QUALIFIED ADULT-ONLY FACILITY.—A qualified adult-only facility (as such term is defined in section 897.16(d) of the final rule published under paragraph (1)) that is also a retailer and that commits a violation as a retailer shall not be subject to the limitations in section 103(q) and shall be subject to penalties applicable to a qualified adult-only facility.

(7) CONGRESSIONAL REVIEW PROVISIONS.—Section 801 of title 5, United States Code, shall not apply to the final rule published under paragraph (1).

(b) LIMITATION ON ADVISORY OPINIONS.—As of the date of enactment of this Act, the following documents issued by the Food and Drug Administration shall not constitute advisory opinions under section 10.85(d)(1) of title 21, Code of Federal Regulations, except as they apply to tobacco products, and shall not be cited by the Secretary of Health and Human Services or the Food and Drug Administration as binding precedent:

(1) The preamble to the proposed rule in the document titled ''Regulations Restricting the Sale and Distribution of Cigarettes and Smokeless Tobacco Products to Protect Children and Adolescents'' (60 Fed. Reg. 41314–41372 (August 11, 1995)).

(2) The document titled ''Nicotine in Cigarettes and Smokeless Tobacco Products is a Drug and These Products Are Nicotine Delivery Devices Under the Federal Food, Drug, and Cosmetic Act'' (60 Fed. Reg. 41453–41787 (August 11, 1995)).

(3) The preamble to the final rule in the document titled ''Regulations Restricting the Sale and Distribution of Cigarettes and Smokeless Tobacco to Protect Children and Adolescents'' (61 Fed. Reg. 44396–44615 (August 28, 1996)).

(4) The document titled ''Nicotine in Cigarettes and Smokeless Tobacco is a Drug and These Products are Nicotine Delivery Devices Under the Federal Food, Drug, and Cosmetic Act; Jurisdictional Determination'' (61 Fed. Reg. 44619–45318 (August 28, 1996)).

SEC. 103. CONFORMING AND OTHER AMENDMENTS TO GENERAL PROVISIONS.

(a) AMENDMENT OF FEDERAL FOOD, DRUG, AND COSMETIC ACT.—Except as otherwise expressly provided, whenever in this section an amendment is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference is to a section or other provision of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.).

(b) SECTION 301.—Section 301 (21 U.S.C. 331) is amended—

(1) in subsection (a), by inserting ''tobacco product,'' after ''device,'';

(2) in subsection (b), by inserting ''tobacco product,'' after ''device,'';

(3) in subsection (c), by inserting ''tobacco product,'' after ''device,'';

(4) in subsection (e)—

(A) by striking the period after ''572(i)''; and

(B) by striking ''or 761 or the refusal to permit access to'' and inserting ''761, 909, or 920 or the refusal to permit access to'';

(5) in subsection (g), by inserting ''tobacco product,'' after ''device,'';

(6) in subsection (h), by inserting ''tobacco product,'' after ''device,'';

(7) in subsection (j)—

(A) by striking the period after ''573''; and

(B) by striking ''708, or 721'' and inserting ''708, 721, 904, 905, 906, 907, 908, 909, or 920(b)'';

(8) in subsection (k), by inserting ''tobacco product,'' after ''device,'';

(9) by striking subsection (p) and inserting the following:

''(p) The failure to register in accordance with section 510 or 905, the failure to provide any information required by section 510(j), 510(k), 905(i), or 905(j), or the failure to provide a notice required by section 510(j)(2) or 905(i)(3).'';

(10) by striking subsection (q)(1) and inserting the following:

''(q)(1) The failure or refusal—

''(A) to comply with any requirement prescribed under section 518, 520(g), 903(b), 907, 908, or 915;

''(B) to furnish any notification or other material or information required by or under section 519, 520(g), 904, 909, or 920; or

''(C) to comply with a requirement under section 522 or 913.'';

(11) in subsection (q)(2), by striking ''device,'' and inserting ''device or tobacco product,'';

(12) in subsection (r), by inserting ''or tobacco product'' after the term ''device'' each time that such term appears; and

(13) by adding at the end the following:

''(oo) The sale of tobacco products in violation of a no-tobacco-sale order issued under section 303(f).

''(pp) The introduction or delivery for introduction into interstate commerce of a tobacco product in violation of section 911.

''(qq)(1) Forging, counterfeiting, simulating, or falsely representing, or without proper authority using any mark, stamp (including tax stamp), tag, label, or other identification device upon any tobacco product or container or labeling thereof so as to render such tobacco product a counterfeit tobacco product.

''(2) Making, selling, disposing of, or keeping in possession, control, or custody, or concealing any punch, die, plate, stone, or other item that is designed to print, imprint, or reproduce the trademark, trade name, or other identifying mark, imprint, or device of another or any likeness of any of the foregoing upon any tobacco product or container or labeling thereof so as to render such tobacco product a counterfeit tobacco product.

''(3) The doing of any act that causes a tobacco product to be a counterfeit tobacco product, or the sale or dispensing, or the holding for sale or dispensing, of a counterfeit tobacco product.

''(rr) The charitable distribution of tobacco products.

''(ss) The failure of a manufacturer or distributor to notify the Attorney General and the

Secretary of the Treasury of their knowledge of tobacco products used in illicit trade.

''(tt) Making any express or implied statement or representation directed to consumers with respect to a tobacco product, in a label or labeling or through the media or advertising, that either conveys, or misleads or would mislead consumers into believing, that—

''(1) the product is approved by the Food and Drug Administration;

''(2) the Food and Drug Administration deems the product to be safe for use by consumers;

''(3) the product is endorsed by the Food and Drug Administration for use by consumers; or

''(4) the product is safe or less harmful by virtue of—

''(A) its regulation or inspection by the Food and Drug Administration; or

''(B) its compliance with regulatory requirements set by the Food and Drug Administration; including any such statement or representation rendering the product misbranded under section 903.''.

(c) SECTION 303.—Section 303(f) (21 U.S.C. 333(f)) is amended—

(1) in paragraph (5)—

(A) by striking ''paragraph (1), (2), (3), or (4)'' each place such appears and inserting ''paragraph (1), (2), (3), (4), or (9)'';

(B) in subparagraph (A)—

(i) by striking ''assessed'' the first time it appears and inserting ''assessed, or a no-tobacco-sale order may be imposed,''; and

(ii) by striking ''penalty'' the second time it appears and inserting ''penalty, or upon whom a no-tobacco-sale order is to be imposed,'';

(C) in subparagraph (B)—

(i) by inserting after ''penalty,'' the following: ''or the period to be covered by a no-tobacco-sale order,''; and

(ii) by adding at the end the following: ''A no-tobacco-sale order permanently prohibiting an individual retail outlet from selling tobacco products shall include provisions that allow the outlet, after a specified period of time, to request that the Secretary compromise, modify, or terminate the order.''; and

(D) by adding at the end the following:

''(D) The Secretary may compromise, modify, or terminate, with or without conditions, any no-tobacco-sale order.'';

(2) in paragraph (6)—

(A) by inserting ''or the imposition of a no-tobacco-sale order'' after the term ''penalty'' each place such term appears; and

(B) by striking ''issued.'' and inserting ''issued, or on which the no-tobacco-sale order was imposed, as the case may be.''; and

(3) by adding at the end the following:

''(8) If the Secretary finds that a person has committed repeated violations of restrictions promulgated under section 906(d) at a particular retail outlet then the Secretary may impose a no-tobacco-sale order on that person prohibiting the sale of tobacco products in that outlet. A no-tobacco-sale order may be imposed with a civil penalty under paragraph (1). Prior to the entry of a no-sale order under this paragraph, a person shall be entitled to a hearing pursuant to the procedures established through regulations of the Food and Drug Administration for assessing civil money penalties, including at a retailer's request a hearing by telephone, or at the nearest regional or field office of the Food and Drug Administration, or at a Federal, State, or county facility within 100 miles from the location of the retail outlet, if such a facility is available.

''(9) CIVIL MONETARY PENALTIES FOR VIOLATION OF TOBACCO PRODUCT REQUIREMENTS.—

''(A) IN GENERAL.—Subject to subparagraph (B), any person who violates a requirement of this Act which relates to tobacco products shall be liable to the United States for a civil penalty in an amount not to exceed $15,000 for each such violation, and not to exceed $1,000,000 for all such violations adjudicated in a single proceeding.

''(B) ENHANCED PENALTIES.—

''(i) Any person who intentionally violates a requirement of section 902(5), 902(6), 904, 908(c), or 911(a), shall be subject to a civil monetary penalty of—

''(I) not to exceed $250,000 per violation, and not to exceed $1,000,000 for all such violations adjudicated in a single proceeding; or

''(II) in the case of a violation that continues after the Secretary provides written notice to such person, $250,000 for the first 30-day period (or any portion thereof) that the person continues to be in violation, and such amount shall double for every 30-day period thereafter that the violation continues, not to exceed $1,000,000 for any 30-day period, and not to exceed $10,000,000 for all such violations adjudicated in a single proceeding.

''(ii) Any person who violates a requirement of section 911(g)(2)(C)(ii) or 911(i)(1), shall be subject to a civil monetary penalty of—

''(I) not to exceed $250,000 per violation, and not to exceed $1,000,000 for all such violations adjudicated in a single proceeding; or

''(II) in the case of a violation that continues after the Secretary provides written notice to such person, $250,000 for the first 30-day period (or any portion thereof) that the person continues to be in violation, and such amount shall double for every 30-day period thereafter that the violation continues, not to exceed $1,000,000 for any 30-day period, and not to exceed $10,000,000 for all such violations adjudicated in a single proceeding.

''(iii) In determining the amount of a civil penalty under clause (i)(II) or (ii)(II), the Secretary shall take into consideration whether the person is making efforts toward correcting the violation of the requirements of the section for which such person is subject to such civil penalty.''.

(d) SECTION 304.—Section 304 (21 U.S.C. 334) is amended—

(1) in subsection (a)(2)—

(A) by striking ''and'' before ''(D)''; and

(B) by striking ''device.'' and inserting the following: ''device, and (E) Any adulterated or misbranded tobacco product.'';

(2) in subsection (d)(1), by inserting ''tobacco product,'' after ''device,'';

(3) in subsection (g)(1), by inserting ''or tobacco product'' after the term ''device'' each place such term appears; and

(4) in subsection (g)(2)(A), by inserting ''or tobacco product'' after ''device''.

(e) SECTION 505.—Section 505(n)(2) (21 U.S.C. 355(n)(2)) is amended by striking ''section 904'' and inserting ''section 1004''.

(f) SECTION 523.—Section 523(b)(2)(D) (21 U.S.C. 360m(b)(2)(D)) is amended by striking ''section 903(g)'' and inserting ''section 1003(g)''.

(g) SECTION 702.—Section 702(a)(1) (U.S.C. 372(a)(1)) is amended—

(1) by striking ''(a)(1)'' and inserting ''(a)(1)(A)''; and

(2) by adding at the end the following:

''(B)(i) For a tobacco product, to the extent feasible, the Secretary shall contract with the States in accordance with this paragraph to carry out inspections of retailers within that State in connection with the enforcement of this Act.

''(ii) The Secretary shall not enter into any contract under clause (i) with the government of any of the several States to exercise enforcement authority under this Act on Indian country without the express written consent of the Indian tribe involved.''.

(h) SECTION 703.—Section 703 (21 U.S.C. 373) is amended—

(1) by inserting ''tobacco product,'' after the term ''device,'' each place such term appears; and

(2) by inserting ''tobacco products,'' after the term ''devices,'' each place such term appears.

(i) SECTION 704.—Section 704 (21 U.S.C. 374) is amended—

(1) in subsection (a)(1)—

(A) by striking ''devices, or cosmetics'' each place it appears and inserting ''devices, tobacco products, or cosmetics'';

(B) by striking ''or restricted devices'' each place it appears and inserting ''restricted devices, or tobacco products''; and

(C) by striking ''and devices and subject to'' and all that follows through ''other drugs or devices'' and inserting ''devices, and tobacco products and subject to reporting and inspection under regulations lawfully issued pursuant to section 505 (i) or (k), section 519, section 520(g), or chapter IX and data relating to other drugs, devices, or tobacco products'';

(2) in subsection (b), by inserting ''tobacco product,'' after ''device,''; and

(3) in subsection (g)(13), by striking ''section 903(g)'' and inserting ''section 1003(g)''.

(j) SECTION 705.—Section 705(b) (21 U.S.C. 375(b)) is amended by inserting ''tobacco products,'' after ''devices,''.

(k) SECTION 709.—Section 709 (21 U.S.C. 379a) is amended by inserting ''tobacco product,'' after ''device,''.

(l) SECTION 801.—Section 801 (21 U.S.C. 381) is amended—

(1) in subsection (a)—

(A) by inserting ''tobacco products,'' after the term ''devices,'';

(B) by inserting ''or section 905(h)'' after ''section 510''; and

(C) by striking the term ''drugs or devices'' each time such term appears and inserting ''drugs, devices, or tobacco products'';

(2) in subsection (e)(1)—

(A) by inserting ''tobacco product'' after ''drug, device,''; and

(B) by inserting '', and a tobacco product intended for export shall not be deemed to be in violation of section 906(e), 907, 911, or 920(a),'' before ''if it—''; and

(3) by adding at the end the following:

''(p)(1) Not later than 36 months after the date of enactment of the Family Smoking Prevention and Tobacco Control Act, and annually thereafter, the Secretary shall submit to the Committee on Health, Education, Labor, and Pensions of the Senate and the Committee on Energy and Commerce of the House of Representatives, a report regarding—

''(A) the nature, extent, and destination of United States tobacco product exports that do not conform to tobacco product standards established pursuant to this Act;

''(B) the public health implications of such exports, including any evidence of a negative public health impact; and

''(C) recommendations or assessments of policy alternatives available to Congress and the executive branch to reduce any negative public health impact caused by such exports.

''(2) The Secretary is authorized to establish appropriate information disclosure requirements to carry out this subsection.''.

(m) SECTION 1003.—Section 1003(d)(2)(C) (as redesignated by section 101(b)) is amended—

(1) by striking ''and'' after ''cosmetics,''; and

(2) inserting '', and tobacco products'' after ''devices''.

(n) SECTION 1009.—Section 1009(b) (as redesignated by section 101(b)) is amended by striking ''section 908'' and inserting ''section 1008''.

(o) SECTION 409 OF THE FEDERAL MEAT INSPECTION ACT.—Section 409(a) of the Federal Meat Inspection Act (21 U.S.C. 679(a)) is amended by striking ''section 902(b)'' and inserting ''section 1002(b)''.

(p) RULE OF CONSTRUCTION.—Nothing in this section is intended or shall be construed to expand, contract, or otherwise modify or amend the existing limitations on State government authority over tribal restricted fee or trust lands.

(q) GUIDANCE AND EFFECTIVE DATES.—

(1) IN GENERAL.—The Secretary of Health and Human Services shall issue guidance—

(A) defining the term ''repeated violation'', as used in section 303(f)(8) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 333(f)(8)) as

amended by subsection (c), as including at least 5 violations of particular requirements over a 36-month period at a particular retail outlet that constitute a repeated violation and providing for civil penalties in accordance with paragraph (2);

(B) providing for timely and effective notice by certified or registered mail or personal delivery to the retailer of each alleged violation at a particular retail outlet prior to conducting a followup compliance check, such notice to be sent to the location specified on the retailer's registration or to the retailer's registered agent if the retailer has provider such agent information to the Food and Drug Administration prior to the violation;

(C) providing for a hearing pursuant to the procedures established through regulations of the Food and Drug Administration for assessing civil money penalties, including at a retailer's request a hearing by telephone or at the nearest regional or field office of the Food and Drug Administration, and providing for an expedited procedure for the administrative appeal of an alleged violation;

(D) providing that a person may not be charged with a violation at a particular retail outlet unless the Secretary has provided notice to the retailer of all previous violations at that outlet;

(E) establishing that civil money penalties for multiple violations shall increase from one violation to the next violation pursuant to paragraph (2) within the time periods provided for in such paragraph;

(F) providing that good faith reliance on the presentation of a false government-issued photographic identification that contains a date of birth does not constitute a violation of any minimum age requirement for the sale of tobacco products if the retailer has taken effective steps to prevent such violations, including—

(i) adopting and enforcing a written policy against sales to minors;

(ii) informing its employees of all applicable laws;

(iii) establishing disciplinary sanctions for employee noncompliance; and

(iv) requiring its employees to verify age by way of photographic identification or electronic scanning device; and

(G) providing for the Secretary, in determining whether to impose a no-tobacco-sale order and in determining whether to compromise, modify, or terminate such an order, to consider whether the retailer has taken effective steps to prevent violations of the minimum age requirements for the sale of tobacco products, including the steps listed in subparagraph (F).

(2) PENALTIES FOR VIOLATIONS.—

(A) IN GENERAL.—The amount of the civil penalty to be applied for violations of restrictions promulgated under section 906(d), as described in paragraph (1), shall be as follows:

(i) With respect to a retailer with an approved training program, the amount of the civil penalty shall not exceed—

(I) in the case of the first violation, $0.00 together with the issuance of a warning letter to the retailer;

(II) in the case of a second violation within a 12-month period, $250;

(III) in the case of a third violation within a 24-month period, $500;

(IV) in the case of a fourth violation within a 24-month period, $2,000;

(V) in the case of a fifth violation within a 36-month period, $5,000; and

(VI) in the case of a sixth or subsequent violation within a 48-month period, $10,000 as determined by the Secretary on a case-by-case basis.

(ii) With respect to a retailer that does not have an approved training program, the amount of the civil penalty shall not exceed—

(I) in the case of the first violation, $250;

(II) in the case of a second violation within a 12-month period, $500;

(III) in the case of a third violation within a 24-month period, $1,000;

(IV) in the case of a fourth violation within a 24-month period, $2,000;

(V) in the case of a fifth violation within a 36-month period, $5,000; and

(VI) in the case of a sixth or subsequent violation within a 48-month period, $10,000 as determined by the Secretary on a case-by-case basis.

(B) TRAINING PROGRAM.—For purposes of subparagraph (A), the term ''approved training program'' means a training program that complies with standards developed by the Food and Drug Administration for such programs.

(C) CONSIDERATION OF STATE PENALTIES.—The Secretary shall coordinate with the States in enforcing the provisions of this Act and, for purposes of mitigating a civil penalty to be applied for a violation by a retailer of any restriction promulgated under section 906(d), shall consider the amount of any penalties paid by the retailer to a State for the same violation.

(3) GENERAL EFFECTIVE DATE.—The amendments made by paragraphs (2), (3), and (4) of subsection (c) shall take effect upon the issuance of guidance described in paragraph (1) of this subsection.

(4) SPECIAL EFFECTIVE DATE.—The amendment made by subsection (c)(1) shall take effect on the date of enactment of this Act.

(5) PACKAGE LABEL REQUIREMENTS.—The package label requirements of paragraphs (3) and (4) of section 903(a) of the Federal Food, Drug, and Cosmetic Act (as amended by this division) shall take effect on the date that is 12 months after the date of enactment of this Act. The package label requirements of paragraph (2) of such section 903(a) for cigarettes shall take effect on the date that is 15 months after the issuance of the regulations required by section 4(d) of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1333), as amended by section 201 of this division. The package label requirements of paragraph (2) of such section 903(a) for tobacco products other than cigarettes shall take effect on the date that is 12 months after the date of enactment of this Act. The effective date shall be with respect to the date of manufacture, provided that, in any case, beginning 30 days after such effective date, a manufacturer shall not introduce into the domestic commerce of the United States any product, irrespective of the date of manufacture, that is not in conformance with section 903(a) (2), (3), and (4) and section 920(a) of the Federal Food, Drug, and Cosmetic Act.

(6) ADVERTISING REQUIREMENTS.—The advertising requirements of section 903(a)(8) of the Federal Food, Drug, and Cosmetic Act (as amended by this division) shall take effect on the date that is 12 months after the date of enactment of this Act.

SEC. 104. STUDY ON RAISING THE MINIMUM AGE TO PURCHASE TOBACCO PRODUCTS.

The Secretary of Health and Human Services shall—

(1) convene an expert panel to conduct a study on the public health implications of raising the minimum age to purchase tobacco products; and

(2) not later than 5 years after the date of enactment of this Act, submit a report to the Congress on the results of such study.

SEC. 105. ENFORCEMENT ACTION PLAN FOR ADVERTISING AND PROMOTION RESTRICTIONS.

(a) ACTION PLAN.—

(1) DEVELOPMENT.—Not later than 6 months after the date of enactment of this Act, the Secretary of Health and Human Services (in this section referred to as the ''Secretary'') shall develop and publish an action plan to enforce restrictions adopted pursuant to section 906 of the Federal Food, Drug, and Cosmetic Act, as added by section 101(b) of this division, or pursuant to section 102(a) of this division, on promotion and advertising of menthol and other cigarettes to youth.

(2) CONSULTATION.—The action plan required by paragraph (1) shall be developed in consultation with public health organizations and other stakeholders with demonstrated expertise and experience in serving minority communities.

(3) PRIORITY.—The action plan required by paragraph (1) shall include provisions designed to ensure enforcement of the restrictions described in paragraph (1) in minority communities.

(b) STATE AND LOCAL ACTIVITIES.—

(1) INFORMATION ON AUTHORITY.—Not later than 3 months after the date of enactment of this Act, the Secretary shall inform State, local, and tribal governments of the authority provided to such entities under section 5(c) of the Federal Cigarette Labeling and Advertising Act, as added by section 203 of this division, or preserved by such entities under section 916 of the Federal Food, Drug, and Cosmetic Act, as added by section 101(b) of this division.

(2) COMMUNITY ASSISTANCE.—At the request of communities seeking assistance to prevent underage tobacco use, the Secretary shall provide such assistance, including assistance with strategies to address the prevention of underage tobacco use in communities with a disproportionate use of menthol cigarettes by minors.

SEC. 106. STUDIES OF PROGRESS AND EFFECTIVENESS.

(a) FDA REPORT.—Not later than 3 years after the date of enactment of this Act, and not less than every 2 years thereafter, the Secretary of Health and Human Services shall submit to the Committee on Health, Education, Labor, and Pensions of the Senate and the Committee on Energy and Commerce of the House of Representatives, a report concerning—

(1) the progress of the Food and Drug Administration in implementing this division, including major accomplishments, objective measurements of progress, and the identification of any areas that have not been fully implemented;

(2) impediments identified by the Food and Drug Administration to progress in implementing this division and to meeting statutory timeframes;

(3) data on the number of new product applications received under section 910 of the Federal Food, Drug, and Cosmetic Act and modified risk product applications received under section 911 of such Act, and the number of applications acted on under each category; and

(4) data on the number of full time equivalents engaged in implementing this division.

(b) GAO REPORT.—Not later than 5 years after the date of enactment of this Act, the Comptroller General of the United States shall conduct a study of, and submit to the Committees described in subsection (a) a report concerning—

(1) the adequacy of the authority and resources provided to the Secretary of Health and Human Services for this division to carry out its goals and purposes; and

(2) any recommendations for strengthening that authority to more effectively protect the public health with respect to the manufacture, marketing, and distribution of tobacco products.

(c) PUBLIC AVAILABILITY.—The Secretary of Health and Human Services and the Comptroller General of the United States, respectively, shall make the reports required under subsection (a) and (b) available to the public, including by posting such reports on the respective Internet websites of the Food and Drug Administration and the Government Accountability Office.

TITLE II—TOBACCO PRODUCT WARNINGS; CONSTITUENT AND SMOKE CONSTITUENT DISCLOSURE

SEC. 201. CIGARETTE LABEL AND ADVERTISING WARNINGS.

(a) AMENDMENT.—Section 4 of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1333) is amended to read as follows:

''SEC. 4. LABELING.

''(a) LABEL REQUIREMENTS.—

''(1) IN GENERAL.—It shall be unlawful for any person to manufacture, package, sell, offer

to sell, distribute, or import for sale or distribution within the United States any cigarettes the package of which fails to bear, in accordance with the requirements of this section, one of the following labels:

''WARNING: Cigarettes are addictive.

''WARNING: Tobacco smoke can harm your children.

''WARNING: Cigarettes cause fatal lung disease.

''WARNING: Cigarettes cause cancer.

''WARNING: Cigarettes cause strokes and heart disease.

''WARNING: Smoking during pregnancy can harm your baby.

''WARNING: Smoking can kill you.

''WARNING: Tobacco smoke causes fatal lung disease in nonsmokers.

''WARNING: Quitting smoking now greatly reduces serious risks to your health.

''(2) PLACEMENT; TYPOGRAPHY; ETC.—Each label statement required by paragraph (1) shall be located in the upper portion of the front and rear panels of the package, directly on the package underneath the cellophane or other clear wrapping. Each label statement shall comprise the top 50 percent of the front and rear panels of the package. The word 'WARNING' shall appear in capital letters and all text shall be in conspicuous and legible 17-point type, unless the text of the label statement would occupy more than 70 percent of such area, in which case the text may be in a smaller conspicuous and legible type size, provided that at least 60 percent of such area is occupied by required text. The text shall be black on a white background, or white on a black background, in a manner that contrasts, by typography, layout, or color, with all other printed material on the package, in an alternating fashion under the plan submitted under subsection (c).

''(3) DOES NOT APPLY TO FOREIGN DISTRIBUTION.—The provisions of this subsection do not apply to a tobacco product manufacturer or distributor of cigarettes which does not manufacture, package, or import cigarettes for sale or distribution within the United States.

''(4) APPLICABILITY TO RETAILERS.—A retailer of cigarettes shall not be in violation of this subsection for packaging that—

''(A) contains a warning label;

''(B) is supplied to the retailer by a license- or permit-holding tobacco product manufacturer, importer, or distributor; and

''(C) is not altered by the retailer in a way that is material to the requirements of this subsection.

''(b) ADVERTISING REQUIREMENTS.—

''(1) IN GENERAL.—It shall be unlawful for any tobacco product manufacturer, importer, distributor, or retailer of cigarettes to advertise or cause to be advertised within the United States any cigarette unless its advertising bears, in accordance with the requirements of this section, one of the labels specified in subsection (a).

''(2) TYPOGRAPHY, ETC.—Each label statement required by subsection (a) in cigarette advertising shall comply with the standards set forth in this paragraph. For press and poster advertisements, each such statement and (where applicable) any required statement relating to tar, nicotine, or other constituent (including a smoke constituent) yield shall comprise at least 20 percent of the area of the advertisement and shall appear in a conspicuous and prominent format and location at the top of each advertisement within the trim area. The Secretary may revise the required type sizes in such area in such manner as the Secretary determines appropriate. The word 'WARNING' shall appear in capital letters, and each label statement shall appear in conspicuous and legible type. The text of the label statement shall be black if the background is white and white if the background is black, under the plan submitted under subsection (c). The label statements shall be enclosed by a rectangular border that is the same color as the letters of the statements and that is the width of the first downstroke of the capital 'W' of the word 'WARNING' in the label statements. The text of such label statements shall be in a typeface pro rata to the following requirements: 45-point type for a whole-page broadsheet newspaper advertisement; 39-point type for a half-page broadsheet newspaper advertisement; 39-point type for a whole-page tabloid newspaper advertisement; 27-point type for a half-page tabloid newspaper advertisement; 31.5-point type for a double page spread magazine or whole-page magazine advertisement; 22.5-point type for a 28 centimeter by 3 column advertisement; and 15-point type for a 20 centimeter by 2 column advertisement. The label statements shall be in English, except that—

''(A) in the case of an advertisement that appears in a newspaper, magazine, periodical, or other publication that is not in English, the statements shall appear in the predominant language of the publication; and

''(B) in the case of any other advertisement that is not in English, the statements shall appear in the same language as that principally used in the advertisement.

''(3) MATCHBOOKS.—Notwithstanding paragraph (2), for matchbooks (defined as containing not more than 20 matches) customarily given away with the purchase of tobacco products, each label statement required by subsection (a) may be printed on the inside cover of the matchbook.

''(4) ADJUSTMENT BY SECRETARY.—The Secretary may, through a rulemaking under section 553 of title 5, United States Code, adjust the format and type sizes for the label statements required by this section; the text, format, and type sizes of any required tar, nicotine yield, or other constituent (including smoke constituent) disclosures; or the text, format, and type sizes for any other disclosures required under the Federal Food, Drug, and Cosmetic Act. The text of any such label statements or disclosures shall be required to appear only within the 20 percent area of cigarette advertisements provided by paragraph (2). The Secretary shall promulgate regulations which provide for adjustments in the format and type sizes of any text required to appear in such area to ensure that the total text required to appear by law will fit within such area.

''(c) MARKETING REQUIREMENTS.—

''(1) RANDOM DISPLAY.—The label statements specified in subsection (a)(1) shall be randomly displayed in each 12-month period, in as equal a number of times as is possible on each brand of the product and be randomly distributed in all areas of the United States in which the product is marketed in accordance with a plan submitted by the tobacco product manufacturer, importer, distributor, or retailer and approved by the Secretary.

''(2) ROTATION.—The label statements specified in subsection (a)(1) shall be rotated quarterly in alternating sequence in advertisements for each brand of cigarettes in accordance with a plan submitted by the tobacco product manufacturer, importer, distributor, or retailer to, and approved by, the Secretary.

''(3) REVIEW.—The Secretary shall review each plan submitted under paragraph (2) and approve it if the plan—

''(A) will provide for the equal distribution and display on packaging and the rotation required in advertising under this subsection; and

''(B) assures that all of the labels required under this section will be displayed by the tobacco product manufacturer, importer, distributor, or retailer at the same time.

''(4) APPLICABILITY TO RETAILERS.—This subsection and subsection (b) apply to a retailer only if that retailer is responsible for or directs the label statements required under this section except that this paragraph shall not relieve a retailer of liability if the retailer displays, in a location open to the public, an advertisement that does not contain a warning label or has been altered by the retailer in a way that is material to the requirements of this subsection and subsection (b).

''(d) GRAPHIC LABEL STATEMENTS.—Not later than 24 months after the date of enactment of the Family Smoking Prevention and Tobacco Control Act, the Secretary shall issue regulations that require color graphics depicting the negative health consequences of smoking to accompany the label statements specified in subsection (a)(1). The Secretary may adjust the type size, text and format of the label statements specified in subsections (a)(2) and (b)(2) as the Secretary determines appropriate so that both the graphics and the accompanying label statements are clear, conspicuous, legible and appear within the specified area.''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect 15 months after the issuance of the regulations required by subsection (a). Such effective date shall be with respect to the date of manufacture, provided that, in any case, beginning 30 days after such effective date, a manufacturer shall not introduce into the domestic commerce of the United States any product, irrespective of the date of manufacture, that is not in conformance with section 4 of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1333), as amended by subsection (a).

SEC. 202. AUTHORITY TO REVISE CIGARETTE WARNING LABEL STATEMENTS.

(a) PREEMPTION.—Section 5(a) of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1334(a)) is amended by striking ''No'' and inserting ''Except to the extent the Secretary requires additional or different statements on any cigarette package by a regulation, by an order, by a standard, by an authorization to market a product, or by a condition of marketing a product, pursuant to the Family Smoking Prevention and Tobacco Control Act (and the amendments made by that Act), or as required under section 903(a)(2) or section 920(a) of the Federal Food, Drug, and Cosmetic Act, no''.

(b) CHANGE IN REQUIRED STATEMENTS.—Section 4 of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1333), as amended by section 201, is further amended by adding at the end the following:

''(d) CHANGE IN REQUIRED STATEMENTS.—The Secretary through a rulemaking conducted under section 553 of title 5, United States Code, may adjust the format, type size, color graphics, and text of any of the label requirements, or establish the format, type size, and text of any other disclosures required under the Federal Food, Drug, and Cosmetic Act, if the Secretary finds that such a change would promote greater public understanding of the risks associated with the use of tobacco products.''.

SEC. 203. STATE REGULATION OF CIGARETTE ADVERTISING AND PROMOTION.

Section 5 of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1334) is amended by adding at the end the following:

''(c) EXCEPTION.—Notwithstanding subsection (b), a State or locality may enact statutes and promulgate regulations, based on smoking and health, that take effect after the effective date of the Family Smoking Prevention and Tobacco Control Act, imposing specific bans or restrictions on the time, place, and manner, but not content, of the advertising or promotion of any cigarettes.''.

SEC. 204. SMOKELESS TOBACCO LABELS AND ADVERTISING WARNINGS.

(a) AMENDMENT.—Section 3 of the Comprehensive Smokeless Tobacco Health Education Act of 1986 (15 U.S.C. 4402) is amended to read as follows:

''SEC. 3. SMOKELESS TOBACCO WARNING.

''(a) GENERAL RULE.—

''(1) It shall be unlawful for any person to manufacture, package, sell, offer to sell, distribute, or import for sale or distribution within the United States any smokeless tobacco product

unless the product package bears, in accordance with the requirements of this Act, one of the following labels:

''WARNING: This product can cause mouth cancer.

''WARNING: This product can cause gum disease and tooth loss.

''WARNING: This product is not a safe alternative to cigarettes.

''WARNING: Smokeless tobacco is addictive.

''(2) Each label statement required by paragraph (1) shall be—

''(A) located on the 2 principal display panels of the package, and each label statement shall comprise at least 30 percent of each such display panel; and

''(B) in 17-point conspicuous and legible type and in black text on a white background, or white text on a black background, in a manner that contrasts by typography, layout, or color, with all other printed material on the package, in an alternating fashion under the plan submitted under subsection (b)(3), except that if the text of a label statement would occupy more than 70 percent of the area specified by subparagraph (A), such text may appear in a smaller type size, so long as at least 60 percent of such warning area is occupied by the label statement.

''(3) The label statements required by paragraph (1) shall be introduced by each tobacco product manufacturer, packager, importer, distributor, or retailer of smokeless tobacco products concurrently into the distribution chain of such products.

''(4) The provisions of this subsection do not apply to a tobacco product manufacturer or distributor of any smokeless tobacco product that does not manufacture, package, or import smokeless tobacco products for sale or distribution within the United States.

''(5) A retailer of smokeless tobacco products shall not be in violation of this subsection for packaging that—

''(A) contains a warning label;

''(B) is supplied to the retailer by a license- or permit-holding tobacco product manufacturer, importer, or distributor; and

''(C) is not altered by the retailer in a way that is material to the requirements of this subsection.

''(b) REQUIRED LABELS.—

''(1) It shall be unlawful for any tobacco product manufacturer, packager, importer, distributor, or retailer of smokeless tobacco products to advertise or cause to be advertised within the United States any smokeless tobacco product unless its advertising bears, in accordance with the requirements of this section, one of the labels specified in subsection (a).

''(2)(A) Each label statement required by subsection (a) in smokeless tobacco advertising shall comply with the standards set forth in this paragraph.

''(B) For press and poster advertisements, each such statement and (where applicable) any required statement relating to tar, nicotine, or other constituent yield shall comprise at least 20 percent of the area of the advertisement.

''(C) The word 'WARNING' shall appear in capital letters, and each label statement shall appear in conspicuous and legible type.

''(D) The text of the label statement shall be black on a white background, or white on a black background, in an alternating fashion under the plan submitted under paragraph (3).

''(E) The label statements shall be enclosed by a rectangular border that is the same color as the letters of the statements and that is the width of the first downstroke of the capital 'W' of the word 'WARNING' in the label statements.

''(F) The text of such label statements shall be in a typeface pro rata to the following requirements: 45-point type for a whole-page broadsheet newspaper advertisement; 39-point type for a half-page broadsheet newspaper advertisement; 39-point type for a whole-page tabloid newspaper advertisement; 27-point type for a half-page tabloid newspaper advertisement; 31.5-point type for a double page spread magazine or whole-page magazine advertisement; 22.5-point type for a 28 centimeter by 3 column advertisement; and 15-point type for a 20 centimeter by 2 column advertisement.

''(G) The label statements shall be in English, except that—

''(i) in the case of an advertisement that appears in a newspaper, magazine, periodical, or other publication that is not in English, the statements shall appear in the predominant language of the publication; and

''(ii) in the case of any other advertisement that is not in English, the statements shall appear in the same language as that principally used in the advertisement.

''(3)(A) The label statements specified in subsection (a)(1) shall be randomly displayed in each 12-month period, in as equal a number of times as is possible on each brand of the product and be randomly distributed in all areas of the United States in which the product is marketed in accordance with a plan submitted by the tobacco product manufacturer, importer, distributor, or retailer and approved by the Secretary.

''(B) The label statements specified in subsection (a)(1) shall be rotated quarterly in alternating sequence in advertisements for each brand of smokeless tobacco product in accordance with a plan submitted by the tobacco product manufacturer, importer, distributor, or retailer to, and approved by, the Secretary.

''(C) The Secretary shall review each plan submitted under subparagraphs (A) and (B) and approve it if the plan—

''(i) will provide for the equal distribution and display on packaging and the rotation required in advertising under this subsection; and

''(ii) assures that all of the labels required under this section will be displayed by the tobacco product manufacturer, importer, distributor, or retailer at the same time.

''(D) This paragraph applies to a retailer only if that retailer is responsible for or directs the label statements under this section, unless the retailer displays, in a location open to the public, an advertisement that does not contain a warning label or has been altered by the retailer in a way that is material to the requirements of this subsection.

''(4) The Secretary may, through a rulemaking under section 553 of title 5, United States Code, adjust the format and type sizes for the label statements required by this section; the text, format, and type sizes of any required tar, nicotine yield, or other constituent disclosures; or the text, format, and type sizes for any other disclosures required under the Federal Food, Drug, and Cosmetic Act. The text of any such label statements or disclosures shall be required to appear only within the 20 percent area of advertisements provided by paragraph (2). The Secretary shall promulgate regulations which provide for adjustments in the format and type sizes of any text required to appear in such area to ensure that the total text required to appear by law will fit within such area.

''(c) TELEVISION AND RADIO ADVERTISING.—It is unlawful to advertise smokeless tobacco on any medium of electronic communications subject to the jurisdiction of the Federal Communications Commission.''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect 12 months after the date of enactment of this Act. Such effective date shall be with respect to the date of manufacture, provided that, in any case, beginning 30 days after such effective date, a manufacturer shall not introduce into the domestic commerce of the United States any product, irrespective of the date of manufacture, that is not in conformance with section 3 of the Comprehensive Smokeless Tobacco Health Education Act of 1986 (15 U.S.C. 4402), as amended by subsection (a).

SEC. 205. AUTHORITY TO REVISE SMOKELESS TOBACCO PRODUCT WARNING LABEL STATEMENTS.

(a) IN GENERAL.—Section 3 of the Comprehensive Smokeless Tobacco Health Education Act of 1986 (15 U.S.C. 4402), as amended by section 204, is further amended by adding at the end the following:

''(d) AUTHORITY TO REVISE WARNING LABEL STATEMENTS.—The Secretary may, by a rulemaking conducted under section 553 of title 5, United States Code, adjust the format, type size, and text of any of the label requirements, require color graphics to accompany the text, increase the required label area from 30 percent up to 50 percent of the front and rear panels of the package, or establish the format, type size, and text of any other disclosures required under the Federal Food, Drug, and Cosmetic Act, if the Secretary finds that such a change would promote greater public understanding of the risks associated with the use of smokeless tobacco products.''.

(b) PREEMPTION.—Section 7(a) of the Comprehensive Smokeless Tobacco Health Education Act of 1986 (15 U.S.C. 4406(a)) is amended by striking ''No'' and inserting ''Except as provided in the Family Smoking Prevention and Tobacco Control Act (and the amendments made by that Act), no''.

SEC. 206. TAR, NICOTINE, AND OTHER SMOKE CONSTITUENT DISCLOSURE TO THE PUBLIC.

Section 4 of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1333), as amended by sections 201 and 202, is further amended by adding at the end the following:

''(e) TAR, NICOTINE, AND OTHER SMOKE CONSTITUENT DISCLOSURE.—

''(1) IN GENERAL.—The Secretary shall, by a rulemaking conducted under section 553 of title 5, United States Code, determine (in the Secretary's sole discretion) whether cigarette and other tobacco product manufacturers shall be required to include in the area of each cigarette advertisement specified by subsection (b) of this section, or on the package label, or both, the tar and nicotine yields of the advertised or packaged brand. Any such disclosure shall be in accordance with the methodology established under such regulations, shall conform to the type size requirements of subsection (b) of this section, and shall appear within the area specified in subsection (b) of this section.

''(2) RESOLUTION OF DIFFERENCES.—Any differences between the requirements established by the Secretary under paragraph (1) and tar and nicotine yield reporting requirements established by the Federal Trade Commission shall be resolved by a memorandum of understanding between the Secretary and the Federal Trade Commission.

''(3) CIGARETTE AND OTHER TOBACCO PRODUCT CONSTITUENTS.—In addition to the disclosures required by paragraph (1), the Secretary may, under a rulemaking conducted under section 553 of title 5, United States Code, prescribe disclosure requirements regarding the level of any cigarette or other tobacco product constituent including any smoke constituent. Any such disclosure may be required if the Secretary determines that disclosure would be of benefit to the public health, or otherwise would increase consumer awareness of the health consequences of the use of tobacco products, except that no such prescribed disclosure shall be required on the face of any cigarette package or advertisement. Nothing in this section shall prohibit the Secretary from requiring such prescribed disclosure through a cigarette or other tobacco product package or advertisement insert, or by any other means under the Federal Food, Drug, and Cosmetic Act.

''(4) RETAILERS.—This subsection applies to a retailer only if that retailer is responsible for or directs the label statements required under this section.''.

TITLE III—PREVENTION OF ILLICIT TRADE IN TOBACCO PRODUCTS

SEC. 301. LABELING, RECORDKEEPING, RECORDS INSPECTION.

Chapter IX of the Federal Food, Drug, and Cosmetic Act, as added by section 101, is further amended by adding at the end the following:

''SEC. 920. LABELING, RECORDKEEPING, RECORDS INSPECTION.

''(a) ORIGIN LABELING.—

''(1) REQUIREMENT.—Beginning 1 year after the date of enactment of the Family Smoking Prevention and Tobacco Control Act, the label, packaging, and shipping containers of tobacco products other than cigarettes for introduction or delivery for introduction into interstate commerce in the United States shall bear the statement 'sale only allowed in the United States'. Beginning 15 months after the issuance of the regulations required by section 4(d) of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1333), as amended by section 201 of Family Smoking Prevention and Tobacco Control Act, the label, packaging, and shipping containers of cigarettes for introduction or delivery for introduction into interstate commerce in the United States shall bear the statement 'Sale only allowed in the United States'.

''(2) EFFECTIVE DATE.—The effective date specified in paragraph (1) shall be with respect to the date of manufacture, provided that, in any case, beginning 30 days after such effective date, a manufacturer shall not introduce into the domestic commerce of the United States any product, irrespective of the date of manufacture, that is not in conformance with such paragraph.

''(b) REGULATIONS CONCERNING RECORDKEEPING FOR TRACKING AND TRACING.—

''(1) IN GENERAL.—The Secretary shall promulgate regulations regarding the establishment and maintenance of records by any person who manufactures, processes, transports, distributes, receives, packages, holds, exports, or imports tobacco products.

''(2) INSPECTION.—In promulgating the regulations described in paragraph (1), the Secretary shall consider which records are needed for inspection to monitor the movement of tobacco products from the point of manufacture through distribution to retail outlets to assist in investigating potential illicit trade, smuggling, or counterfeiting of tobacco products.

''(3) CODES.—The Secretary may require codes on the labels of tobacco products or other designs or devices for the purpose of tracking or tracing the tobacco product through the distribution system.

''(4) SIZE OF BUSINESS.—The Secretary shall take into account the size of a business in promulgating regulations under this section.

''(5) RECORDKEEPING BY RETAILERS.—The Secretary shall not require any retailer to maintain records relating to individual purchasers of tobacco products for personal consumption.

''(c) RECORDS INSPECTION.—If the Secretary has a reasonable belief that a tobacco product is part of an illicit trade or smuggling or is a counterfeit product, each person who manufactures, processes, transports, distributes, receives, holds, packages, exports, or imports tobacco products shall, at the request of an officer or employee duly designated by the Secretary, permit such officer or employee, at reasonable times and within reasonable limits and in a reasonable manner, upon the presentation of appropriate credentials and a written notice to such person, to have access to and copy all records (including financial records) relating to such article that are needed to assist the Secretary in investigating potential illicit trade, smuggling, or counterfeiting of tobacco products. The Secretary shall not authorize an officer or employee of the government of any of the several States to exercise authority under the preceding sentence on Indian country without the express written consent of the Indian tribe involved.

''(d) KNOWLEDGE OF ILLEGAL TRANSACTION.—

''(1) NOTIFICATION.—If the manufacturer or distributor of a tobacco product has knowledge which reasonably supports the conclusion that a tobacco product manufactured or distributed by such manufacturer or distributor that has left the control of such person may be or has been—

''(A) imported, exported, distributed, or offered for sale in interstate commerce by a person without paying duties or taxes required by law; or

''(B) imported, exported, distributed, or diverted for possible illicit marketing,

the manufacturer or distributor shall promptly notify the Attorney General and the Secretary of the Treasury of such knowledge.

''(2) KNOWLEDGE DEFINED.—For purposes of this subsection, the term 'knowledge' as applied to a manufacturer or distributor means—

''(A) the actual knowledge that the manufacturer or distributor had; or

''(B) the knowledge which a reasonable person would have had under like circumstances or which would have been obtained upon the exercise of due care.

''(e) CONSULTATION.—In carrying out this section, the Secretary shall consult with the Attorney General of the United States and the Secretary of the Treasury, as appropriate.''.

SEC. 302. STUDY AND REPORT.

(a) STUDY.—The Comptroller General of the United States shall conduct a study of cross-border trade in tobacco products to—

(1) collect data on cross-border trade in tobacco products, including illicit trade and trade of counterfeit tobacco products and make recommendations on the monitoring of such trade;

(2) collect data on cross-border advertising (any advertising intended to be broadcast, transmitted, or distributed from the United States to another country) of tobacco products and make recommendations on how to prevent or eliminate, and what technologies could help facilitate the elimination of, cross-border advertising; and

(3) collect data on the health effects (particularly with respect to individuals under 18 years of age) resulting from cross-border trade in tobacco products, including the health effects resulting from—

(A) the illicit trade of tobacco products and the trade of counterfeit tobacco products; and

(B) the differing tax rates applicable to tobacco products.

(b) REPORT.—Not later than 18 months after the date of enactment of this Act, the Comptroller General of the United States shall submit to the Committee on Health, Education, Labor, and Pensions of the Senate and the Committee on Energy and Commerce of the House of Representatives a report on the study described in subsection (a).

(c) DEFINITION.—In this section:

(1) The term ''cross-border trade'' means trade across a border of the United States, a State or Territory, or Indian country.

(2) The term ''Indian country'' has the meaning given to such term in section 1151 of title 18, United States Code.

(3) The terms ''State'' and ''Territory'' have the meanings given to those terms in section 201 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321).

DIVISION B—FEDERAL RETIREMENT REFORM ACT

SEC. 100. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This division may be cited as the ''Federal Retirement Reform Act of 2009''.

(b) TABLE OF CONTENTS.—The table of contents for this division is as follows:

TITLE I—PROVISIONS RELATING TO FEDERAL EMPLOYEES RETIREMENT

SEC. 101. SHORT TITLE.

This title may be cited as the ''Thrift Savings Plan Enhancement Act of 2009''.

SEC. 102. AUTOMATIC ENROLLMENTS AND IMMEDIATE EMPLOYING AGENCY CONTRIBUTIONS.

(a) IN GENERAL.—Section 8432(b) of title 5, United States Code, is amended by striking paragraphs (2) through (4) and inserting the following:

''(2)(A) The Executive Director shall by regulation provide for an eligible individual to be automatically enrolled to make contributions under subsection (a) at the default percentage of basic pay.

''(B) For purposes of this paragraph, the default percentage shall be equal to 3 percent or such other percentage, not less than 2 percent nor more than 5 percent, as the Board may prescribe.

''(C) The regulations shall include provisions under which any individual who would otherwise be automatically enrolled in accordance with subparagraph (A) may—

''(i) modify the percentage or amount to be contributed pursuant to automatic enrollment, effective not later than the first full pay period following receipt of the election by the appropriate processing entity; or

''(ii) decline automatic enrollment altogether.

''(D)(i) Except as provided in clause (ii), for purposes of this paragraph, the term 'eligible individual' means any individual who, after any regulations under subparagraph (A) first take effect, is appointed, transferred, or reappointed to a position in which that individual becomes eligible to contribute to the Thrift Savings Fund.

''(ii) Members of the uniformed services shall not be eligible individuals for purposes of this paragraph.

''(E) Sections 8351(a)(1), 8440a(a)(1), 8440b(a)(1), 8440c(a)(1), 8440d(a)(1), and 8440e(a)(1) shall be applied in a manner consistent with the purposes of this paragraph.''.

(b) TECHNICAL AMENDMENT.—Section 8432(b)(1) of title 5, United States Code, is amended by striking the parenthetical matter in subparagraph (B).

SEC. 103. QUALIFIED ROTH CONTRIBUTION PROGRAM.

(a) IN GENERAL.—Subchapter III of chapter 84 of title 5, United States Code, is amended by inserting after section 8432c the following:

''§ 8432d. Qualified Roth contribution program

''(a) DEFINITIONS.—For purposes of this section—

''(1) the term 'qualified Roth contribution program' means a program described in paragraph

(1) of section 402A(b) of the Internal Revenue Code of 1986 which meets the requirements of paragraph (2) of such section; and

''(2) the terms 'designated Roth contribution' and 'elective deferral' have the meanings given such terms in section 402A of the Internal Revenue Code of 1986.

''(b) AUTHORITY TO ESTABLISH.—The Executive Director shall by regulation provide for the inclusion in the Thrift Savings Plan of a qualified Roth contribution program, under such terms and conditions as the Board may prescribe.

''(c) REQUIRED PROVISIONS.—The regulations under subsection (b) shall include—

''(1) provisions under which an election to make designated Roth contributions may be made—

''(A) by any individual who is eligible to make contributions under section 8351, 8432(a), 8440a, 8440b, 8440c, 8440d, or 8440e; and

''(B) by any individual, not described in subparagraph (A), who is otherwise eligible to make elective deferrals under the Thrift Savings Plan;

''(2) any provisions which may, as a result of enactment of this section, be necessary in order to clarify the meaning of any reference to an 'account' made in section 8432(f), 8433, 8434(d), 8435, 8437, or any other provision of law; and

''(3) any other provisions which may be necessary to carry out this section.''.

(b) CLERICAL AMENDMENT.—The analysis for chapter 84 of title 5, United States Code, is amended by inserting after the item relating to section 8432c the following:

''8432d. Qualified Roth contribution program.''.

SEC. 104. AUTHORITY TO ESTABLISH MUTUAL FUND WINDOW.

(a) IN GENERAL.—Section 8438(b)(1) of title 5, United States Code, is amended—

(1) in subparagraph (D), by striking ''and'' at the end;

(2) in subparagraph (E), by striking the period and inserting ''; and''; and

(3) by adding after subparagraph (E) the following:

''(F) a service that enables participants to invest in mutual funds, if the Board authorizes the mutual fund window under paragraph (5).''.

(b) REQUIREMENTS.—Section 8438(b) of title 5, United States Code, is amended by adding at the end the following:

''(5)(A) The Board may authorize the addition of a mutual fund window under the Thrift Savings Plan if the Board determines that such addition would be in the best interests of participants.

''(B) The Board shall ensure that any expenses charged for use of the mutual fund window are borne solely by the participants who use such window.

''(C) The Board may establish such other terms and conditions for the mutual fund window as the Board considers appropriate to protect the interests of participants, including requirements relating to risk disclosure.

''(D) The Board shall consult with the Employee Thrift Advisory Council (established under section 8473) before authorizing the addition of a mutual fund window or establishing a service that enables participants to invest in mutual funds.''.

(c) TECHNICAL AND CONFORMING AMENDMENT.—Section 8438(d)(1) of title 5, United States Code, is amended by inserting ''and options'' after ''investment funds''.

SEC. 105. REPORTING REQUIREMENTS.

(a) ANNUAL REPORT.—The Board shall, not later than June 30 of each year, submit to Congress an annual report on the operations of the Thrift Savings Plan. Such report shall include, for the prior calendar year, information on the number of participants as of the last day of such prior calendar year, the median balance in participants' accounts as of such last day, demographic information on participants, the percentage allocation of amounts among investment funds or options, the status of the development and implementation of the mutual fund window, the diversity demographics of any company, investment adviser, or other entity retained to invest and manage the assets of the Thrift Savings Fund, and such other information as the Board considers appropriate. A copy of each annual report under this subsection shall be made available to the public through an Internet website.

(b) REPORTING OF FEES AND OTHER INFORMATION.—

(1) IN GENERAL.—The Board shall include in the periodic statements provided to participants under section 8439(c) of title 5, United States Code, the amount of the investment management fees, administrative expenses, and any other fees or expenses paid with respect to each investment fund and option under the Thrift Savings Plan. Any such statement shall also provide a statement notifying participants as to how they may access the annual report described in subsection (a), as well as any other information concerning the Thrift Savings Plan that might be useful.

(2) USE OF ESTIMATES.—For purposes of providing the information required under this subsection, the Board may provide a reasonable and representative estimate of any fees or expenses described in paragraph (1) and shall indicate any such estimate as being such an estimate. Any such estimate shall be based on the previous year's experience.

(c) DEFINITIONS.—For purposes of this section—

(1) the term ''Board'' has the meaning given such term by 8401(5) of title 5, United States Code;

(2) the term ''participant'' has the meaning given such term by section 8471(3) of title 5, United States Code; and

(3) the term ''account'' means an account established under section 8439 of title 5, United States Code.

SEC. 106. ACKNOWLEDGMENT OF RISK.

(a) IN GENERAL.—Section 8439(d) of title 5, United States Code, is amended—

(1) by striking the matter after ''who elects to invest in'' and before ''shall sign an acknowledgment'' and inserting ''any investment fund or option under this chapter, other than the Government Securities Investment Fund,''; and

(2) by striking ''either such Fund'' and inserting ''any such fund or option''.

(b) COORDINATION WITH PROVISIONS RELATING TO FIDUCIARY RESPONSIBILITIES, LIABILITIES, AND PENALTIES.—Section 8477(e)(1)(C) of title 5, United States Code, is amended—

(1) by redesignating subparagraph (C) as subparagraph (C)(i); and

(2) by adding at the end the following:

''(ii) A fiduciary shall not be liable under subparagraph (A), and no civil action may be brought against a fiduciary—

''(I) for providing for the automatic enrollment of a participant in accordance with section 8432(b)(2)(A);

''(II) for enrolling a participant in a default investment fund in accordance with section 8438(c)(2); or

''(III) for allowing a participant to invest through the mutual fund window or for establishing restrictions applicable to participants' ability to invest through the mutual fund window.''.

SEC. 107. SUBPOENA AUTHORITY.

(a) IN GENERAL.—Chapter 84 of title 5, United States Code, is amended by inserting after section 8479 the following:

''§ 8480. Subpoena authority

''(a) In order to carry out the responsibilities specified in this subchapter and subchapter III of this chapter, the Executive Director may issue subpoenas commanding each person to whom the subpoena is directed to produce designated books, documents, records, electronically stored information, or tangible materials in the possession or control of that individual.

''(b) Notwithstanding any Federal, State, or local law, any person, including officers, agents, and employees, receiving a subpoena under this section, who complies in good faith with the subpoena and thus produces the materials sought, shall not be liable in any court of any State or the United States to any individual, domestic or foreign corporation or upon a partnership or other unincorporated association for such production.

''(c) When a person fails to obey a subpoena issued under this section, the district court of the United States for the district in which the investigation is conducted or in which the person failing to obey is found, shall on proper application issue an order directing that person to comply with the subpoena. The court may punish as contempt any disobedience of its order.

''(d) The Executive Director shall prescribe regulations to carry out subsection (a).''.

(b) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections for chapter 84 of title 5, United States Code, is amended by inserting after the item relating to section 8479 the following:

''8480. Subpoena authority.''.

SEC. 108. AMOUNTS IN THRIFT SAVINGS FUNDS SUBJECT TO LEGAL PROCEEDINGS.

Section 8437(e)(3) of title 5, United States Code, is amended in the first sentence by striking ''or relating to the enforcement of a judgment for the physically, sexually, or emotionally abusing a child as provided under section 8467(a)'' and inserting ''the enforcement of an order for restitution under section 3663A of title 18, forfeiture under section 8432(g)(5) of this title, or an obligation of the Executive Director to make a payment to another person under section 8467 of this title''.

SEC. 109. ACCOUNTS FOR SURVIVING SPOUSES.

Section 8433(e) of title 5, United States Code, is amended—

(1) by inserting ''(1)'' after ''(e)''; and

(2) by adding at the end the following:

''(2) Notwithstanding section 8424(d), if an employee, Member, former employee, or former Member dies and has designated as sole or partial beneficiary his or her spouse at the time of death, or, if an employee, Member, former employee, or former Member, dies with no designated beneficiary and is survived by a spouse, the spouse may maintain the portion of the employee's or Member's account to which the spouse is entitled in accordance with the following terms:

''(A) Subject to the limitations of subparagraph (B), the spouse shall have the same withdrawal options under subsection (b) as the employee or Member were the employee or Member living.

''(B) The spouse may not make withdrawals under subsection (g) or (h).

''(C) The spouse may not make contributions or transfers to the account.

''(D) The account shall be disbursed upon the death of the surviving spouse. A beneficiary or surviving spouse of a deceased spouse who has inherited an account is ineligible to maintain the inherited spousal account.

''(3) The Executive Director shall prescribe regulations to carry out this subsection.''.

SEC. 110. TREATMENT OF MEMBERS OF THE UNIFORMED SERVICES UNDER THE THRIFT SAVINGS PLAN.

(a) SENSE OF CONGRESS.—It is the sense of Congress that—

(1) members of the uniformed services should have a retirement system that is at least as generous as the one which is available to Federal civilian employees; and

(2) Federal civilian employees receive matching contributions from their employing agencies for their contributions to the Thrift Savings Fund, but the costs of requiring such a matching contribution from the Department of Defense could be significant.

(b) REPORTING REQUIREMENT.—Not later than 180 days after the date of the enactment of this

Act, the Secretary of Defense shall report to Congress on—

(1) the cost to the Department of Defense of providing a matching payment with respect to contributions made to the Thrift Savings Fund by members of the Armed Forces;

(2) the effect that requiring such a matching payment would have on recruitment and retention; and

(3) any other information that the Secretary of Defense considers appropriate.

TITLE II—SPECIAL SURVIVOR INDEMNITY ALLOWANCE FOR SURVIVING SPOUSES OF ARMED FORCES MEMBERS

SEC. 201. INCREASE IN MONTHLY AMOUNT OF SPECIAL SURVIVOR INDEMNITY ALLOWANCE FOR WIDOWS AND WIDOWERS OF DECEASED MEMBERS OF THE ARMED FORCES AFFECTED BY REQUIRED SURVIVOR BENEFIT PLAN ANNUITY OFFSET FOR DEPENDENCY AND INDEMNITY COMPENSATION.

(a) PAYMENT AMOUNT PER FISCAL YEAR.—Paragraph (2) of section 1450(m) of title 10, United States Code, is amended—

(1) in subparagraph (E), by striking ''and'' after the semicolon; and

(2) by striking subparagraph (F) and inserting the following new subparagraphs:

''(F) for months during fiscal year 2014, $150;

''(G) for months during fiscal year 2015, $200;

''(H) for months during fiscal year 2016, $275; and

''(I) for months during fiscal year 2017, $310.''.

(b) DURATION.—Paragraph (6) of such section is amended—

(1) by striking ''February 28, 2016'' and inserting ''September 30, 2017''; and

(2) by striking ''March 1, 2016'' both places it appears and inserting ''October 1, 2017''.

Mr. DODD. Mr. President, I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

ORDER OF BUSINESS

Mr. REID. Mr. President, this will be the last vote of the week. We have a lot of work going on in the committees and that will continue on Monday. The next vote will be Tuesday morning. I will confer with the distinguished Republican leader as to what time we will do that and what it is going to be on for sure. We think we know, but there will be a vote Tuesday morning.

Everyone has been notified, but to make sure that people understand, when we come back after the July 4 recess, we are going to be in session for 5 weeks. The House will be in session for only 4 weeks. We have 5 weeks and we are going to work very hard during that period of time. I have had requests from the managers of the bill, the health care bill, Senator BAUCUS and DODD, that we need every day of that break so there is only going to be 1 day that there will be no votes—Mondays and Fridays there will be votes—which is Friday, July 17.

The first day we get back we are going to have a Monday morning vote, to show everybody we are serious about this. So the day we get back there will be a Monday morning vote. We have a tremendous amount of work to do. We not only have health care, which is going to take so much of our time, but we are in the appropriations process. The House is going to pass all their appropriations bills by the end of the July recess. I don't know if we can meet that schedule—it is somewhat doubtful—but we are going to pass some bills. We are going to try to get to one this work period.

Without going into more detail, the next work period is going to be extremely long, arduous, and extremely important.

I suggest the absence of a quorum.

The PRESIDING OFFICER. Will the leader withhold his request for a quorum call?

Mr. REID. I withhold.

The PRESIDING OFFICER. The Senator from New Mexico is recognized.

UNANIMOUS CONSENT REQUEST—EXECUTIVE CALENDAR

Mr. BINGAMAN. Mr. President, I wish to propound a unanimous consent request. I ask unanimous consent the Senate proceed to executive session to consider Calendar No. 97, the nomination of Hilary Chandler Tompkins to be Solicitor of the Department of Interior, the nomination be confirmed, the motion to reconsider be laid on the table with no further motion to be in order, that any statements related to the nomination be printed in the RECORD, and upon confirmation the President be immediately notified of the Senate's action and the Senate then resume legislative session.

The PRESIDING OFFICER. Is there objection?

Mr. CORNYN. Mr. President, reserving the right to object.

The PRESIDING OFFICER. The Senator from Texas is recognized.

Mr. CORNYN. With all due respect to my colleague from New Mexico, I am advised that the nomination has not yet been cleared on this side. We are going to keep working on it, but at this time I must object and I do object.

The PRESIDING OFFICER. Objection is noted.

The majority leader is recognized.

MORNING BUSINESS

Mr. REID. Mr. President, I know my friend, the distinguished Senator from Texas, wishes to speak for up to 20 minutes, is that right?

Mr. CORNYN. That is my wish.

Mr. REID. We have Senators on this side. What I would ask consent to do is have Senator BINGAMAN be recognized for up to 3 minutes, Senator CORNYN be recognized for up to 20 minutes, and then I will be recognized following his statement. Following me, Senator DORGAN be recognized.

I ask we proceed to a period of morning business, with Senators permitted to speak for up to 10 minutes, with the exceptions I noted.

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

The Senator from New Mexico is recognized.

NOMINATION OF HILARY CHANDLER TOMPKINS

Mr. BINGAMAN. Mr. President, let me state I am disappointed to see the objection still raised to the confirmation of Hilary Chandler Tompkins to be the Solicitor for the Department of Interior. She is extremely well qualified. No one has raised any question about her qualifications. Our former colleague, now Secretary Salazar, needs a Solicitor in the Department of Interior.

We reported her nomination out of our committee on April 30, nearly 6 weeks ago now. There has been something of a rolling hold on her nomination.

I know Senator BENNETT had an objection at one point; that has been satisfied. Senator COBURN had an objection; that has been satisfied. Senator BUNNING had an objection; that has been satisfied. Now I am informed there are additional objections.

I hope very much my colleagues on the Republican side will go ahead and approve her for confirmation quickly so that Secretary Salazar can get on with the important business of the Department of Interior.

I yield the floor.

The PRESIDING OFFICER. The Senator from Texas is recognized.

HEALTH CARE REFORM

Mr. CORNYN. Mr. President, I want to spend a few minutes talking about the importance and challenge of health care reform, something that is on the fast track in the Senate.

Recently, as I traveled my State of 24 million people, I heard many similar themes from my constituents. What they told me is that our top priority ought to be reducing the cost of health care because, of course, by reducing the cost it becomes more affordable by more people and we attack what is one of the other principal concerns, and certainly one of mine, and that is too many people who are uninsured in this country.

We know cost is one reason why 46 million people are not insured in this country, some of whom have good jobs that pay well, but if they are young they would rather put the money in their pocket than pay for health care. Others have different circumstances, maybe small businesses that are priced out of the market.

It is a fact that American families have seen their health care premiums double over the last 10 years. My constituents and the American people generally are also very concerned about our future. As they see so much borrowing and so much spending here in Washington, they worry about the fact that Medicare, which is the health care program for seniors, has an unfunded liability of $38 trillion. So, to understand, while we have roughly $2 trillion in annual deficits running, we also have $38 trillion in unfunded Federal liabilities for Medicare and the trust

fund is anticipated to go insolvent by the year 2017, less than 8 years from now.

I appreciate the urgency of focusing on health care reform. We have been working under Chairman BAUCUS and Ranking Member GRASSLEY on the Finance Committee. I know other Senators have been working hard at this as well—Senator KENNEDY and Senator ENZI on the HELP Committee.

I urge us to keep working very hard to work through all the complexities and moving parts of this very challenging problem. I also want to say that I think how we discuss health care reform is very important, but I am also concerned that some voices are greeted with derision or even implicit threats that suggest they better keep quiet if they know what is good for them.

A tremendous amount of work has gone into the series of three Finance Committee roundtables and walkthroughs. But I am disturbed by some reports that perhaps Senators, certainly staff, have urged key stakeholders in the health care reform debate to keep their mouths shut. Every American citizen has a right to petition their government. This is a right every American citizen has, and no American should be told to keep quiet on the subject of health care reform, in particular. We know reforming health care is an urgent priority, as I said, and more than 300 million Americans have a stake in our success.

The Congress needs to take the time given the fact that this represents 17 percent of our gross domestic product and is so complex. We need to take the time and get the input from everyone who has something to offer as we undertake this massive task. We have a highly complex, $2.6 trillion system, and we need to take time to get the reforms done right. I am not talking about peddling in place, I am not talking about wasting time, I am talking about doing what the American people expect us to do; that is, get it right, not try to rush according to some arbitrary timetable.

So I am pleased to say that some stakeholders are standing up against this notion that this deal ought to be cut in a closed back room somewhere. The American Medical Association, for example, has announced its opposition to a government-run plan. The U.S. Chamber of Commerce and the National Federation Of Independent Businesses have expressed concerns about some aspects of the legislation that has been proposed by the President and by leadership here in Congress. But more voices, not less—indeed all voices—deserve to be heard on something of such fundamental importance to our country. The American people deserve a transparent and open debate about the reforms, the various proposals that are on the table, so they can judge for themselves whether Washington elites have their best interest in mind or, to the contrary, whether they believe something else is going on.

I also express my appreciation for the professionals at the Congressional Budget Office for refusing to compromise their integrity and for continuing to provide objective analysis of all reform proposals. That is their job. Their job is not to make policy, but it is their job to give us unvarnished, objective information about costs so we can determine what policy makes sense and what policies we can afford.

In particular, I commend the Director of the Congressional Budget Office, Dr. Doug Elmendorf, who I read was quoted as saying that the Congressional Budget Office ''will never adjust our views to make people happy.'' That demonstrates the kind of integrity and objectivity we would want to inform our decisions. We are the ones who are elected to make those decisions on the part of the American people. We are the ones who should be held accountable for those policies. But we have to get good, objective, unbiased information from professionals with integrity such as Dr. Elmendorf and his staff at the CBO.

Some, it has been suggested, do not like the big price tag the Congressional Budget Office has put on some of their proposals. But the solution is not for the Congressional Budget Office to get creative, it is for Senators to get real and deal with the reality and to use that information in order to craft decisions that work.

I wish to speak in particular about the only bill that has actually been rolled out, more or less, or provisions, and that is the bill proffered by our colleague, Senator TED KENNEDY.

Senator KENNEDY has been a leader in the health care reform debate for more than four decades. I appreciate the fact that he is the first Democrat on either end of Pennsylvania Avenue who has actually put out a proposal with some detail for us to evaluate and react to. While more details are certainly needed, and I hope they will be forthcoming, we already know there are some red lines, some hot spots, some areas that, if embraced by the Democratic leadership, will result in failure, not in success. I think we all should be invested in the goal of bipartisan success. In fact, there are some provisions in the Kennedy bill that would make things worse, in my view and in the view of others.

I think there is one thing we should do; that is, take the Hippocratic Oath, the same oath medical practitioners take to ''do no harm.'' I think we should take a legislative Hippocratic Oath to first do no harm as we undertake this massive reform. For example, in the Kennedy bill, it describes a plan called ''a public health insurance plan operated by the Federal Government with a payment scale that is set in statute and based on Medicare.'' I believe ''Medicare for all'' or a government-run health plan is a disaster in the making for the millions of Americans who will depend upon us to get this right. Let me explain why.

First, a government-run plan will ultimately take away the health insurance people have right now. Last year, President Obama campaigned on the promise that if you like what you have, you will be able to keep it. I agree with him. That ought to be our goal. But with a so-called government plan, that will not happen because we all know that the government is not just the regulator, but it is also the one paying the bills; that ultimately, the government cannot be calling the balls and strikes even as it takes to the field to be a so-called competitor.

Let me put a finer point on it. One group of analysts, the Lewin Group, said a government plan would take away, ultimately, current health benefits from 119 million Americans and force 130 million into a Washington-run health care plan. How does that happen? Well, ostensibly you would have the government competing with the private sector to provide health care. But we know the government ultimately would provide a more generous package and could do so, of course, at taxpayer expense and save the difficulty of having to compete in the marketplace. Ultimately, as the Lewin Group concluded, it would undercut private competitors, leaving people with no choices and ultimately leaving everyone, or at least 130 million Americans, on a Washington-run health care plan—not a good idea, in my opinion.

Secondly, we know a government plan would drive up costs for those who remain with private insurance. How does that happen? Well, we know there is a phenomenon in health care called cost shifting. That is because Medicare and Medicaid pay submarket rates and health care providers have to make it up somewhere else. Where do they make it up? They end up making it up from people who have insurance. And how do they do that? By people who have insurance paying more than they ultimately receive because the costs are literally shifted from Medicare and Medicaid onto private insurance.

According to a respected actuary, Milliman, commercial payers subsidize the cost of Medicare and Medicaid by nearly $90 billion a year in cost shifting. This represents a hidden tax on American families and small businesses. Milliman estimates that the average private health care premium is more than $1,500 higher per family, more than 10 percent higher than it would be without this government cost-shifting phenomenon. A new government program would increase this cost shifting dramatically and increase the health care premiums of every American family who continues on their private health insurance plan.

Third, we know this Medicare-for-all or government-run plan would basically be like Medicare and Medicaid on steroids. Lest anybody be confused, that is not a good thing. I believe Medicare illustrates what happens when the government takes over health care delivery. For example, first of all, it is

not fiscally sustainable. As I mentioned, Medicare is going to go insolvent in 2017 and currently has $38 trillion in unfunded liabilities.

Low reimbursement rates—and frankly, that is how Medicare and Medicaid try to deal with costs. They cut payments to providers—hospitals and doctors—below the otherwise market rates. These low reimbursement rates reduce patient choice and increase wait times for the physicians they see. Many providers, as I am sure the distinguished occupant of the chair, in his State, knows—we know many doctors are not even taking new Medicare patients and new Medicaid patients because lower reimbursement rates are the problem. Every year, Congress has to come back and reverse the cuts to physician payments under the Medicare sustainable growth rate formula, and those cuts, unless we act to reverse them, will cut physician payments by 20 percent this January.

According to the Washington Post last fall, taxpayers also pay up to $60 billion a year in fraudulent claims on Medicare. So in addition to being fiscally unsustainable, in addition to rationing or providing unrealistically low payments, denying people access to health care, we have $60 billion in fraud and waste in the Medicare Program—hardly a model for Medicare, for a government-run option.

Well, Medicaid has even more problems. Medicaid provides coverage, but it does a poor job of providing access. In one way, this is really a ruse that is being perpetrated on the American people under Medicare and Medicaid. We say: Yes, you have coverage. But if you cannot find a doctor or a health care provider who will provide you access at that price, then their coverage does not do you any good.

According to a recent Wall Street Journal article, Medicaid's low reimbursement rates, which are actually lower than Medicare, have resulted in 40 percent of physicians restricting access to patients in the program. So it is no wonder, as the journal Health Affairs said last month, that ''physicians typically have been less willing to take on new Medicaid patients than patients covered by other types of health insurance.''

Medicaid reimbursement rates, as I said, are even lower than Medicare, more than 25 percent lower than Medicare. The story of Pediatrix Medical Group, which has a significant presence in my State, illustrates the problem.

Pediatrix has more than 1,300 physicians and 500 advanced practice nurses. They specialize in the care of newborns and other very vulnerable children. Pediatrix has noted that ''the lack of appropriate reimbursement is among the common reasons for physicians to refuse to accept new Medicaid patients.'' They have noted that within their own national neonatal and hospitalist patient population, the current government rates pay an average of 28.7 percent less than rates from private insurers. No wonder it is hard for Medicaid beneficiaries—notwithstanding what Congress does, it is hard for them to find a physician who will actually see them at that kind of rate.

Pediatrix has said, ''We believe a public plan structured [after Medicare and Medicaid] would ultimately erode the availability of private health and negatively impact patient access to needed health care.''

The fourth problem I have with the plan in the Kennedy bill is that the government plan would ultimately lead to a rationing of health care. What does that mean? Well, that means delay or denying access to treatment. All we have to do is look at Canada.

A recent op-ed by Dr. David Gratzer in the Wall Street Journal this last week talked about what a government-run plan in Canada has done. Thousands of our friends to the north, of course, come to America each year for lifesaving surgery, if they can afford it, after their government has told them they will just have to wait. Various studies indicate that Canadians, especially the poor, are less healthy under socialized medicine than those in our country. More and more Canadians want to reduce the role of government and expand private options for health care, even as the elites in Washington want to move America in the opposite direction.

The fifth reason a government plan is not a good idea is it would lead to poorer health outcomes. Many Canadians are realizing that socialized medicine is not working for them, and so are many folks in Europe. According to a piece in the Washington Examiner this week, breast cancer rates in Europe, under nationalized health care systems, are significantly higher than they are here in the United States. European women are much more likely to have breast cancer than are American women. Currently, the United States leads the world in treating breast cancer. Women in our country with breast cancer have a 14-percent better chance of survival than those in Europe. Compared to the United States, breast cancer mortality is 52 percent higher in Germany and 88 percent higher in the United Kingdom. This is not something we should want to emulate.

We also see some poor health care outcomes in the United States under government-run health care. For example, numerous studies have documented the poor patient outcomes under the Medicaid Program relative to patients in private plans. For example, Medicaid patients are more than 50 percent more likely to die of coronary bypass surgery than patients with private coverage or Medicare.

There are other problems with the bill that the distinguished Senator from Massachusetts has proposed. Again, I credit him with being the first one to lay out a plan. We have not yet seen one from any other source. But the fact is, the Kennedy bill is not paid for. We don't know how much additional borrowing or how much higher our taxes will have to go up in order to pay the price. It also includes a concept known as pay or play for small businesses. In other words, if you don't have health care coverage for your employees and are a small business, you will have to pay a punitive tax.

The bill also provides very generous Federal subsidies to individuals making as much as $110,000 a year. We are all for a safety net for people who are low income and can't otherwise provide for themselves. But why should taxpayers be forced to pay higher taxes to subsidize health care for people making over $100,000 a year. It doesn't make sense.

The bill also includes an innocuous-sounding council called the Medical Advisory Council, which in effect would give the government power over personal health care decisions, particularly to unelected and unaccountable bureaucrats. Of course, the bill creates new entitlements, which we have no hope of paying for, at the same time when unfunded liabilities for so much of our entitlement programs remain unpaid for. Frankly, while I applaud the distinguished Senator from Massachusetts and his leadership on this issue, I worry that this is a bill that has no bipartisan input. I applaud Senator BAUCUS, chairman of the Finance Committee, and other Democrats on that committee who said we need to come up with a bipartisan solution. When I raised this concern this morning in the Finance Committee, the Kennedy bill was described as more of a wish list than anything else.

The bill reflects very few ideas from Republicans, which we have offered to discuss and would hope to include in any comprehensive health care reform. It includes several provisions which

Republicans have made clear are off the table, if our colleagues want a truly bipartisan bill. I mentioned the government plan option which kills bipartisanship because Republicans cannot support a policy that will lead to a Washington takeover of our health care system. There are better alternatives, alternatives which empower individuals and preserve the individual choice each of us has to make health care decisions, in consultation with our physician or family doctor, in the best interest of our families. Empowering people rather than government is a much better solution than this proposal we see under the Kennedy bill.

Innovators in both government and the private sector have learned that by empowering patients and providing them some incentives, they can actually see costs lowered.

There are a lot of good ideas out there. Unfortunately, the partisan proposal we have from the HELP Committee is not one of them. We hope we can continue to work together, on a bipartisan basis, toward a successful outcome.

I yield the floor.

The PRESIDING OFFICER (Mr. UDALL of Colorado). The majority leader.

TRAVEL PROMOTION ACT OF 2009—MOTION TO PROCEED

CLOTURE MOTION

Mr. REID. Mr. President, I move to proceed to Calendar No. 71, S. 1023, the Travel Promotion Act of 2009, and I send a cloture motion to the desk.

The PRESIDING OFFICER. The cloture motion having been presented under rule XXII, the Chair directs the clerk to read the motion.

The assistant legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing rules of the Senate, hereby move to bring to a close debate on the motion to proceed to Calendar No. 71, S. 1023, the Travel Promotion Act of 2009.

Byron L. Dorgan, Tom Udall, Patrick J. Leahy, Barbara Boxer, Kay R. Hagan, Kirsten E. Gillibrand, Robert P. Casey, Jr., Roland W. Burris, Benjamin L. Cardin, Bill Nelson, John D. Rockefeller, IV, Daniel K. Inouye, Blanche L. Lincoln, Ron Wyden, Bernard Sanders, Sheldon Whitehouse, Ben Nelson.

Mr. REID. Mr. President, I now ask unanimous consent that on Tuesday, June 16, following a period of morning business, the Senate resume consideration of the motion to proceed to S. 1023 and there be 1 hour of debate prior to a vote on the motion to invoke cloture on the motion to proceed, with the time equally divided and controlled between the leaders or their designees; that upon the use or yielding back of that time, the Senate proceed to a vote on the motion to invoke cloture on the motion to proceed, with the mandatory quorum waived.

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

The Senator from North Dakota.

Mr. DORGAN. Mr. President, the legislation described by my colleague, the Travel Promotion Act, is legislation I wish to discuss. The Travel Promotion Act is a bipartisan piece of legislation I have introduced with Senators ENSIGN, INOUYE, MARTINEZ, KLOBUCHAR, REID, and many others. I believe in the last session of Congress, when we introduced this, we had over 50 cosponsors. Let me describe what its purpose is.

Who can be against travel promotion? Here is what has happened to our country with respect to the jobs and economic growth that comes with a decline in foreigners traveling to the United States. Measures put in place quickly after the 2001 attack on 9/11 had a significant impact on travel to the United States by foreign travelers.

We, obviously, wanted to be careful about whom we allowed into our country. We still do. But what happened following that is, instead of reaching out to the world to say: Visit the United States, this is a great place, we encourage you to come here, to vacation here, to see what the United States is all about, we backed away from that. Other countries have not. Here is what we have experienced. I have a chart here showing overseas travel between 2000 and 2008.

Since 2000 and 2008, there has been a 3-percent decrease in foreign visitors to the United States. At the same time, there has been a 40-percent increase in visitors to other countries around the world. Think of the consequences of that to our economy. A foreign visitor, overseas visitor, coming to our country spends on average $4,500 per visit—that is a lot of economic activity, a lot of economic growth and jobs. But inbound travel has decreased in our country and substantially increased in others. Why is that the case?

The rest of the world is very anxious to attract destination visitors to their country, international travelers, to say: We want you to come to our country as a destination for your trip. Take India—one special reason to visit India is this advertisement saying:

''Incredible India, any time is a good time to visit the land of Taj, but there is no time like now.''

Not unusual to see this. It is not only India.

Australia's says: ''Arrived looking for an experience to remember. Departed with adventure we will never forget. Australia, come to Australia.'' If you are an overseas traveler, deciding where to visit, be sure and come to Australia.

Ireland says: ''Go where Ireland takes you.''

Pretty straightforward—makes you want to go to Ireland. Great Britain, Italy, Spain, France, Australia, India, Ireland, they say: Come to our country. Travel to our country. See what our country is about.

We are not doing that.

As a result, in the last 8 years, we have seen a 3-percent decrease in travel by foreign visitors to the United States, while the rest of the world has had a 40-percent increase in travelers destined to those other areas. It makes a big difference. It is very negative in terms of our country's economic opportunity that comes from travel and tourism.

I showed the examples of what other countries are saying in their very explicit campaigns around the world, to say to people: If you are traveling abroad, if you are planning a vacation, a trip, come to our country. Come and see Italy, Great Britain, Ireland, India.

Let me show you what is happening with respect to our country. Headlines such as these: The Sydney Sunday Morning Herald: ''Coming to America Isn't Easy.'' From The Guardian: ''America: More Hassle Than It's Worth?'' From The Sunday Times in London: ''Travel to America? No Thanks.''

There is a perception that it is difficult to come to our country, hard to get a visa, and tourists will experience long waiting lines. Many of these problems have been corrected or improved. In the construction of this legislation, we address the need to better communicate our entry and exit procedures and their improvements. We don't want these negative headlines to be the message to the rest of the world—in fact, quite the opposite.

What a large group of us in the Congress want is for our country to be engaged internationally, to say to people around the world: Come to our country. To see the United States is to understand the wonder of this great country. Come here. Stay here. Vacation here. Understand what America is about.

I can't think of anything better, in terms of our position in the world and how people think of this great country, than to invite them and encourage them to come here. That is why we have introduced this bipartisan piece of legislation called the Travel Promotion Act of 2009.

Interestingly enough, the Congressional Budget Office has said this piece of legislation will reduce the Federal budget deficit by $425 million between 2010 and 2019. We don't bring many pieces of legislation to the floor of the Senate in which the Congressional Budget Office says:

This will make money. This is a net positive. This will reduce the Federal budget deficit. That is what this bill is about.

Let me explain, for a moment, what we are trying to do with the legislation. The Travel Promotion Act will attempt to create international travel opportunities for people from all around the world to come to this country. It will set up a nationally coordinated travel promotion campaign run in a public-private partnership to communicate to the world our country's travel policies and, more importantly, communicate to the world: We want you here. We want you to explore what this great country has to offer. This public-private partnership is an ideal

method for us to improve any negative perceptions out there, particularly as we work on visas and any remaining delays in entry procedures which we have corrected, in large part. This combines public sector accountability with private sector enterprise.

This bill establishes a Corporation for Travel Promotion, an independent, nonprofit corporation, with an 11-member board of directors appointed by the Secretary of Commerce. It creates an Office of Travel Promotion in the Department of Commerce to work with that nonprofit corporation. It sets up a travel promotion fund, financed by a public-private matching program. Federal contributions will be financed by a $10 fee paid by foreign travelers from visa waiver countries and collected in what is called the Electronic System for Travel Authorization.

Many other countries impose fees for people coming and going: Australia, $37 departure fee, an entry fee of $19 to $70; Mexico, an $11 departure fee, up to $38; New Zealand, $16 to $19 on the departure fee; United Kingdom, $80 to $160. There are a lot of fees around for people traveling internationally. We propose to fund this with a very modest fee of $10.

This is very simple. It should be noncontroversial. There are many of us who have worked on this and worked very hard.

My colleague from Minnesota is here, Senator KLOBUCHAR, who has worked with us on this legislation. This is a piece of legislation Senator REID has worked on. Senator ENSIGN is the lead Republican cosponsor. Other cosponsors include Senator MARTINEZ and Senator NELSON of Florida. We have cosponsors across the political spectrum because this issue of asking people from around the world to come to America is not controversial and benefits every State. It cannot possibly be partisan, and it certainly is job creating.

Now here is what some newspapers around the country have said about the legislation.

The Sacramento Bee:

This country needs to reclaim its status as a global magnet for visitors . . . and Congress can help by passing the Travel Promotion Act.

The Los Angeles Times:

Considering that the U.S. spends hundreds of millions of dollars on public diplomacy with dubious results and nearly nothing on promoting tourism, we might do well to invest a little money in wooing travelers.

The Detroit Free Press:

Doesn't it make sense to encourage—at no cost to taxpayers—foreign visitors to come here and leave us some money? There's no good reason not to pass this bill.

The Dallas Morning News:

The Travel Promotion Act is a sensible first step toward putting the welcome mat back on America's doorstep.

And the list goes on.

I do not come from Hawaii or Florida or California, I come from the northern Great Plains. And we have a lot of tourist destinations: the Badlands in North Dakota, some of the most beautiful areas in our country. Tourism is North Dakota's second largest industry. There are so many destinations with such wonder to attract people to our region of the country.

It is where Lewis and Clark, in their epic adventure, decided to spend the winter in area about 40 miles north of Bismarck, ND. We celebrated the 200th anniversary, the bicentennial, of the Lewis and Clark Expedition, and we had a lot of people come from around the world to see that.

The fact is, every State in this country has something it is anxious to show the world, to say: Look at us. Look at what we are doing here. Look how beautiful this part of America is.

So what has happened is, we have been unilaterally disarmed since 9/11, to say: Well, we are worried about who is going to come into this country. We certainly want to keep terrorists out. We sure do, absolutely. But that message ought not be mixed with a message that we do not want to encourage foreign travelers to come to this country to vacation and to experience America.

So at long last a group of us, Republicans and Democrats, have said: If we disagree on so much, how about if we agree on tourism? Can we agree on promoting travel? To say to the English, the Italians, the Spaniards, the French, the folks from India and Thailand and China and elsewhere: You are welcome in this country. We want you to come to this country. We want you to see what our country is about?

To experience this country is to have a sense of wonder about the greatest democracy, the most significant and longest surviving democracy on Earth. We want them to go home with that understanding of what a great country this is. That is what we want.

By the way, we do not believe our nearest neighbors—Mexico and Canada—are irrelevant. We have a lot of people coming from Mexico and Canada, and God bless them. They are great neighbors. We welcome them. We are told they spend, on average, about $900 per trip.

The foreign travelers from overseas, by contrast, spend about $4,500 per trip. That is why this is such an unbelievable job generator. People who come here and spend significant money and purchase the hotel rooms and the rental cars and go to the tourist attractions and do the things people who want to experience America routinely do not only create a lot of jobs and boost economic activity, but their travel also gives us the opportunity to show the rest of the world this is an extraordinary place where they can go home and tell their neighbors they just went to one of the greatest places on Earth.

So as to the Travel Promotion Act of 2009, my hope is—after having battled here on so many different issues, and having cloture votes on everything, and then 30 hours post-cloture while we all stand around with our hands in our pockets and shuffling our shoes—my hope is, perhaps this is the issue, this is the one time, this is the occasion where everybody might say: Do you know something. There is something we can agree on that is noncontroversial, that makes sense. It creates jobs, it expands the economy, and represents the best of sending American values abroad; and that is, the Travel Promotion Act.

If, perhaps, next week we get to that point, I think the American people will have believed we have done something good. So I am pleased to be the lead sponsor. We introduced this in the last Congress and did not get it passed. In this Congress I believe we will.

I give my commendation to the majority leader and thank him for putting this on the agenda. I give my thanks to Senator ENSIGN as the lead cosponsor on the Republican side. But so many Republicans and Democrats have said: Yes, this makes sense. Count us in. We want to be part of expanding this economy and creating jobs and giving an opportunity for the people in the rest of the world to understand we welcome them here.

The PRESIDING OFFICER. The Senator from Minnesota.

Ms. KLOBUCHAR. Mr. President, I am here today to speak in support of the Travel Promotion Act, which is bipartisan legislation. I first want to thank Mr. DORGAN, the Senator from North Dakota. I have visited the Teddy Roosevelt Park, and I want to thank him for his great leadership on this bill over many years. I also want to thank Senator ENSIGN for his leadership. I believe this legislation will help our economy to do better, to create jobs without any taxpayer expense.

As the chair of the Commerce Subcommittee that includes tourism, I recently held a hearing—a well-attended hearing—with many Senators and people there to examine the state of our tourism industry during these troubled economic times. I want to thank my ranking Republican member, Senator MARTINEZ. We did it together. I also held a field hearing in Duluth, MN, to highlight the importance of tourism to midsize and smaller towns in the United States.

During the hearings, we heard about the importance of tourism and travel to our economy and the urgent need to increase international travel to the United States.

As the Presiding Officer, Senator UDALL, knows, coming from Colorado, America has so much to offer our travelers: whether it is the mountains of Colorado or—Senator KAUFMAN is here—the beaches of Delaware or the stunning national landmarks, such as the Grand Canyon, Mount Rushmore, and the Statue of Liberty or the oceans, lakes, and rivers or our mountains, forests, and beaches or our scenic country towns or the bright lights of the big cities or centers of fun and

entertainment such as Las Vegas or Disney World or Duluth.

From the heartland to the coasts, every State has an economic stake in the tourism industry, which is now a major part of the American economy. Throughout the United States, many communities have discovered and developed the economic potential of travel and tourism.

I keep using the example of Duluth because at some point in the 1970s, the economy was so bad there they actually had a billboard, so when you drove out of town, it said: The last one to leave, please turn off the lights.

Well, that billboard is not there anymore, as tourism is the biggest part of their economy, on beautiful Lake Superior, with beautiful museums and an aquarium and a children's museum. It has changed the life of that town. Tourism creates good jobs that cannot be outsourced.

Mr. President, one out of every eight Americans is employed in our travel economy. Each year, travel and tourism contribute approximately $1.3 trillion to the American economy. International visitors, as Senator DORGAN just noted, spend an average of $4,500 per person.

In economic terms, international tourism to the United States counts as an export. Instead of shipping our product to a customer overseas, the customer is coming here to spend money on our goods and our services.

Last year, travel and tourism exports accounted for 8 percent of all U.S. exports and 26 percent of all U.S. services exports. In fact, tourism is one of the few economic sectors where we enjoy a substantial trade surplus.

Travel is a part of the fabric of our State and our country. But over the past decade, we know it has been stretched to the brink. While more people around the world are traveling, a smaller percentage of them are visiting the United States.

This is not just about our troubled economy right now. This was going on long before that. It actually started after 9/11, where, for good reasons, security measures were put in place. But some of those good reasons have turned into very difficult times for tourists to come to this country, and that needs to be fixed. That is part of this bill: to make it easier for tourists to visit our country.

Since 2000, the U.S. share of the world travel market has decreased by nearly 20 percent, costing us hundreds of thousands of jobs and billions of dollars in revenue.

Last year, nearly 200,000 travel-related jobs were lost. The Commerce Department predicts we will lose another 247,000 jobs this year. Remember, this is not about airport CEOs. This is about the janitors who work at the airports. This is about the maids who are doing the beds. This is about the waitresses who are working at the restaurants. This is about the people who do the flowers for the hotels and for the banquets and for the business travelers. These are real jobs in America.

This has always been a country that has opened its arms to people from around the world. That is why we are so great. We have to bring that back. We have to bring people in to visit this country.

The Travel Promotion Act will do just that. By boosting travel to the United States it will also give a boost to our economy. So it is a win-win for the tourism industry, for jobs for America, and for the American people.

Senator DORGAN went through the bill. I do want to emphasize that not only will this consist of travel promotion and promoting our country, like other countries have been doing for years that have been leapfrogging us in this market, additionally, this legislation will establish the Office of Travel Promotion in the Department of Commerce to work with the Corporation for Travel Promotion and the Secretaries of State and Homeland Security to encourage travel and to make sure international visitors are processed efficiently.

It does not cost taxpayers a cent, as Senator DORGAN pointed out, and economists expect it to generate billions for our economy.

According to an analysis by Oxford Economics, this tourism program is estimated to attract 1.6 million new international visitors annually and create $4 billion in new spending in our country, creating 40,000 new jobs.

We know we need to bring back business travel. We should not let a few bad actors influence the decisions of good companies around this country. We know we have to look, this summer, for affordable deals for our families, and people are staying close to home. We want our Minnesotans to go fishing in Minnesota.

I say to the Presiding Officer, I would love to ask you if you know how much money people spend alone in Minnesota on bait and worms every year. I will tell you the answer. It has probably never been uttered before in this Chamber: $50 million a year. Minnesotans and visitors to our State spend $50 million a year on bait and worms for recreational fishing—just to give you an idea of what we are talking about when we talk about tourism spending.

I strongly urge my colleagues to support this important piece of legislation. I am proud to be a cosponsor. I look forward to working on this bill on the floor in the days to come.

MORNING BUSINESS

Ms. KLOBUCHAR. Mr. President, I ask unanimous consent that the Senate proceed to a period of morning business, with Senators permitted to speak therein for up to 10 minutes each.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The Senator from Delaware.

Mr. KAUFMAN. Mr. President, I ask unanimous consent to speak in morning business for 25 minutes.

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

NOMINATION OF SONIA SOTOMAYOR

Mr. KAUFMAN. Mr. President, I rise today to discuss President Obama's nomination of Sonia Sotomayor to be an Associate Justice of the U.S. Supreme Court.

Judge Sonia Sotomayor has impeccable legal credentials and a record of excellence and integrity. Equally important, she has the experience not only to make an excellent Justice but also to have a significant impact on a Court that today reflects too narrow a slice of America.

Judge Sonia Sotomayor's deep appreciation for how the law affects the lives of ordinary Americans is born from her compelling personal background, as well as her time as an assistant district attorney, a commercial litigator, and later as a judge.

Once confirmed, she will become the first Hispanic Justice, and just the third woman, to serve on the Nation's highest Court.

What are we to make, then, of the assaults on the character and record of this seemingly exemplary nominee?

Unfortunately, they seem to be a remnant of more than two decades of ''culture wars'' over Supreme Court nominees.

As someone who was present for the beginning of these wars, I have seen them develop into elaborate political dances, where both sides trade charges that are predictable and often baseless.

Some of these attacks, such as charges of racism and bigotry, deeply undermine our national dialog.

I am encouraged to note that my colleagues on the other side of the aisle have chosen not to join in these attacks, and many, in fact, have condemned them.

Other attacks are equally predictable, from the general charge of ''extremist'' to particular instances of political ''gotcha''—wrenching statements out of context in order to paint a distorted picture of the nominee's record.

At some level, partisan assaults are expected in the Supreme Court nomination process. But in the case of Judge Sotomayor, they are especially divorced from this body's good-faith exercise of its duty to advise and consent.

It is one thing to attack a nominee's judicial philosophy when the President is trying to reshape the Court based on judicial philosophy, when the balance of the Court is at stake, or when the Senate and the President are deeply divided.

None of those situations apply to this nomination.

Judge Sotomayor is a well-qualified, mainstream jurist who does not threaten to tip the balance of the Court and

who is likely to be confirmed by a substantial majority.

Although these partisan attacks take many forms, today I would like to address one persistent, unhelpful, and often baseless charge—that of so-called ''judicial activism.''

What is especially unhelpful about calling someone a judicial activist is that many times it is an empty epithet, divorced from a real assessment of judicial temperament.

As conservative jurist Frank Easterbrook puts it, the charge is empty:

> Everyone wants to appropriate and apply the word so that his favored approach is sound and its opposite ''activist.'' Then ''activism'' just means judges behaving badly—and each person fills in a different definition of badly.

In other words, the term activist, when applied to the decisions of a Supreme Court nominee, is generally nothing more than politically charged shorthand for decisions that the accuser disagrees with.

That is not to say that the term ''judicial activism'' is necessarily without content. If we want to take it seriously, it might mean a failure to defer to the elected branches of government, it might mean disregard for long-established precedent, or it might mean deciding cases based on personal policy preferences rather than the law.

I think it is fair to say that based on any of these definitions, the Supreme Court's current conservative majority has been highly activist.

Let me give just a few examples.

In United States v. Morrison, decided in 2000, the Rehnquist court struck down a key provision of the Violence Against Women Act. Rather than deferring to the considered judgment and extensive fact-finding of a democratically elected Congress, the Court went out of its way to impose its own judgment. This body held extensive hearings, made explicit findings, and voted 95 to 4 in favor of the bill. An activist Court chose to ignore all that and substitute its own, constricted view of the proper role of the national government for that shared by both Congress and the States.

That same year, the Court decided Kimel v. Florida Board of Regents. The five-Justice majority concluded that States could not be sued by private citizens for age discrimination without their consent because of a general principle of sovereign immunity.

This is another decision that was, simultaneously, ''conservative'' in terms of policy outcome and ''activist'' in terms of judging.

It was conservative because it expanded States rights and contracted antidiscrimination rights.

It was activist both because it struck down the considered judgment of Congress and because it was based not at all on the text of the Constitution but instead on the policy preferences of five Justices.

In his dissent in Kimel, Justice Stevens said:

> The kind of judicial activism manifested in such cases represents such a radical departure from the proper role of this Court that it should be opposed whenever the opportunity arises.

With the addition of Chief Justice Roberts and Justice Alito, the conservative majority of the current Court has continued to be highly activist, even though the two newest Justices are not always candid about what they are doing.

In fact, that charge has been leveled against Justices Alito and Roberts by no less an authority than Justice Scalia.

In the campaign finance case, Federal Election Commission v. Wisconsin Right to Life, the Court struck down key provisions of the Bipartisan Campaign Reform Act, again substituting its view of good public policy for that of Congress.

But this was more than a failure to defer to a democratically elected body. The Court effectively overruled controlling precedent—McConnell v. FEC—while pretending that it was doing no such thing. Justice Scalia called this ''faux judicial restraint.''

In much the same vein, in a case called Hein v. Freedom from Religion Foundation, Justices Roberts and Alito were part of a majority that in effect overruled longstanding precedent on taxpayer standing, while again claiming that they were not doing so.

Again, Justice Scalia called their bluff, attacking Justice Alito's opinion for falsely claiming to honor stare decisis.

Of course, in both cases Justice Scalia wanted to overrule the cases in question expressly, but at least he was honest about his intentions.

Then there's Parents Involved in Community Schools v. Seattle School District No. 1.

In that case the Court rejected local community authority in the area of voluntary integration of public schools. Chief Justice Roberts' plurality opinion for the four-person conservative bloc gave the back of the hand to a long line of desegregation precedents, beginning with Brown v. Board of Education.

Remember that this is the same Justice who, during his confirmation hearing, repeatedly professed his allegiance to stare decisis.

If not for the opinion concurring in the judgment by Justice Kennedy, communities that want some modest measure of racial integration in their schools would be virtually powerless to act.

Another recent case, this time in the anti-trust area, again shows that activism is in the eye of the beholder. In Leegin v. PSKS, the Court, with the addition of Justices Roberts and Alito, overruled 96 years of unbroken precedent on vertical price-fixing.

This case, plain and simple, represents the elevation of big manufacturers' interests over those of the consumer. And this Court rejected nearly a century of precedent because the majority of its members decided to embrace a particular economic theory different from the one that prevailed at the time the Sherman Antitrust Act became law.

I want to mention one final example of conservative judicial activism, though there are plenty more I could cite.

Pending before the Supreme Court right now is a case that involves a constitutional challenge to section 5 of the Voting Rights Act. As my colleagues in this body know, section 5 requires some States and political subdivisions, because of a history of racial discrimination, to ''pre-clear'' new voting rules with either the Justice Department or a Federal court.

The claim made by the Texas voting district in the case seems to be that section 5 has outlived its usefulness.

Before voting to reauthorize the Voting Rights Act in 2006, the Congress undertook an extensive and thorough review of the current nature and extent of discrimination against minority voters, and of the continued need for section 5.

It held 21 hearings and accumulated 16,000 pages of testimony over the course of 10 months. And at the end of that process, Congress concluded that section 5 is still necessary, and passed the bill by a vote of 98-to-0 in the Senate and 390-to-33 in the House.

Though the Court has not yet ruled in this case, the questioning from the bench during oral argument should give us concern, and does give us more evidence of conservative judicial activism.

Some members of the conservative wing of the Court, including Justices Scalia and Roberts, suggested by their questions that they intend to disregard the entire CONGRESSIONAL RECORD.

In discussing the provisions of the act that allow jurisdictions to ''bail out'' of section 5 coverage, by showing that they no longer need to be covered, Justice Scalia argued that bailing out was impractical.

When the attorney for the United States explained that Congress had considered and rejected that argument, Justice Scalia responded: ''The question is whether it is right, not whether Congress rejected it.'' So much for deference to legislative fact-finding.

What makes this apparent substitution of a justice's assessment of the facts for that of Congress particularly troubling is the language of the Constitution itself.

Remember that congressional authority for the Voting Rights Act comes from the 15th amendment, which not only guarantees the right of citizens of the United States to vote, but also says in section 2. ''The Congress shall have power to enforce this article by appropriate legislation.''

So here we have Congress operating at the height of its power, and members of the Supreme Court seeming to want to decide the case based on their own view of good policy.

I think I have given enough examples to suggest that judicial activism is a two-way street.

As my Judiciary Committee colleague from Oklahoma said during the confirmation hearing for Chief Justice Roberts, ''We each have our own definition of judicial activism.''

So what does the ''activism'' charge add to the debate? I would say, very little.

Let's take a look at the charge that Judge Sotomayor is a judicial activist.

To support that claim, critics point to a single, much-publicized case involving New Haven firefighters. But this attack is not only disingenuous it is upside down.

In that case, Judge Sotomayor was part of a 3–0 decision based on settled circuit court precedent.

Her panel's decision supported the trial court judge's ruling and the decision of the local government regarding the best way to determine promotions for firefighters.

Later, a majority of the entire court of appeals ruled to let the panel's decision stand.

There is no doubt that the case addresses a difficult set of issues, and that the Supreme Court may come out the other way, though likely by a razor-thin margin.

But Judge Sotomayor's decision to defer to the democratically accountable, local New Haven government and rule along with the majority of her court not to upset settled precedent cannot meet any definition of judicial activism. In fact, the complaint seems to be that she was not activist enough.

The truth of the matter is that Judge Sotomayor, far from being an extremist, is very much in the mainstream.

Other than the firefighters case, she has decided 88 cases involving claims of race discrimination while on the court of appeals. In 78 of those cases, Judge Sotomayor and the panel rejected the claim of discrimination.

Of the 10 cases favoring claims of discrimination, 9 were unanimous, and of those 9, in 7 the unanimous panel included at least one Republican-appointed judge.

I am not so naive as to believe we can eliminate entirely the partisan exploitation of the confirmation process.

Maybe, though, we can put to rest the tired and un-illuminating charge of judicial activism.

After all, that charge is rarely meant as a genuine claim about the exercise of judicial power. Instead, it is generally just an established part of an elaborate and tired script, a claim that we can expect no matter who the nominee may be.

So let's focus on substance rather than empty code words. Let's debate the quality and merits of Judge Sotomayor's judicial philosophy and approach rather than hurl epithets or engage in demagoguery.

Next month, the Judiciary Committee will hold a confirmation hearing, at which Senators from both sides of the aisle will be able to question Judge Sotomayor directly and publicly.

Because Supreme Court Justices are not elected but rather appointed for life, the qualifications of every nominee should be carefully examined, not only by Senators but also by the public at large.

This is the time when the public should be and will be paying close attention. We do not do ourselves, or the public, any favors if we rely on meaningless labels left over from the culture wars.

Mr. President, I urge my colleagues to reconsider what the charge of ''judicial activism'' brings to our debate.

Judge Sotomayor deserves our careful consideration, but I hope that my colleagues here in the Senate will continue to abstain from the culture wars and name calling that too often have characterized our judicial nominations over recent years.

HEALTH CARE REFORM

Mr. KAUFMAN. Mr. President, I wish to speak today about reforming our health care system. As I said last week, most Americans are satisfied with the health care they receive, but if we want to maintain and improve the quality of affordable health care, we need to act now. We must get health care costs under control while preserving choice. We must reform health care to make it more affordable for businesses and patients and less cumbersome for providers. Health care reform has been delayed for too long, and it cannot wait any longer.

If anyone needs reasons as to why health care reform is necessary, all they have to do is read some of the studies that have been released recently that show the dire consequences for our health care system and our economy if we refuse to act. For example, if we allow the status quo to persist, the White House Council of Economic Advisers has estimated that the sheer gross domestic product devoted to health care will rise from 18 percent in 2009 to 28 percent in 2030 and 34 percent in 2040. This trajectory is simply unsustainable.

Businesses in America have to compete against companies from other countries. Many of these foreign companies pay nothing for health care for their workers or retirees. Others pay far less than what many of our larger corporations pay. This puts many of our businesses at a disadvantage in the global marketplace.

A recent report by the Robert Wood Johnson Foundation and the Urban Institute reiterates the pressure that American businesses face in supplying health care benefits to their employees. These researchers prepared analyses using a simulation model estimating how coverage and cost trends would change between now and 2019. Looking at three different scenarios, the worst case would be where there is a slow growth in incomes and continuing high growth rates for health care costs; an intermediate case where there would be some faster growth in incomes but a lower growth rate for health care costs; and the best case would be where there is full employment, faster income growth, and even slower growth in health care costs.

Under all three scenarios, the report showed a tremendous strain on business owners and their employees over the next decade if no reform is enacted. If health care reform is not enacted, the report projects that within 10 years, the cost of health care of a business can double from approximately $430 billion for employee premiums in 2009 to $885 billion in 2019. Even in the best case scenario, employer spending on health insurance premiums would rise by 72 percent.

This would most likely result in fewer Americans being offered employer-sponsored insurance, with a likely drop from 56 percent of employees getting coverage through their employer in 2009 to as few as 49 percent by 2019.

If no changes are made, and the number of people with employer sponsored insurance continues to decrease, that also means the ranks of the uninsured will increase. And the projections are not pretty.

Under the same scenarios, the number of uninsured will reach just over 53 million under the best case and as high as 66 million under the worst case.

Unfortunately, when those without insurance do receive care—most likely in an emergency room—the costs for treating them are passed on to those of us who are fortunate enough to have health insurance.

Providers and hospitals charge insurers more for the services provided to patients who do have health insurance to make up for the cost of treating the uninsured.

These cost shifts result in a ''hidden tax'' of higher premiums for patients and businesses.

Right now, this hidden tax results in an increase of about $1,000 for premiums for family coverage.

It is time for reform.

Over the last decade, Americans have watched their health insurance premiums double at a growth rate six times faster than their wages, threatening their financial stability.

If we do not reform health care, if health care premiums continue to rise at 4 percent per year, in 2025 premiums for family coverage will cost more than $25,000 per year.

Can you imagine how that dollar amount will affect American families?

On top of this, a recent study published in the American Journal of Medicine showed that bankruptcies involving medical bills now account for more than 60 percent of U.S. personal bankruptcies, an increase of 50 percent in just 6 years. And it is not the uninsured that is driving this increase.

In fact, more than 75 percent of families needing to enter bankruptcy because of health care costs actually

have health insurance. Most are middle class, well educated, and own their homes.

They just cannot keep up with the alarming rise in out-of-pocket costs associated with medical care.

It is time for reform.

Our current health care system is rampant with bureaucracy, inefficiency and waste.

An example of this is the amount of time physicians must spend filling out various forms required by insurance plans.

A national survey of physician practices found that, on average, doctors are spending 3 hours per week—the equivalent of 3 workweeks per year just on administrative tasks required by health plans.

The study showed that the cost of interacting with insurance plans amounts to $31 billion annually and approximately 7 percent of all U.S. expenditures for physician and clinical services.

More importantly, on a personal level, this is 3 weeks less time annually that physicians have to spend with their patients discussing their treatment options, explaining the pros and cons of various procedures, learning the fears and anxieties of their patients, furthering the patient-doctor relationship.

It is time for reform.

We have attempted to reform our health care system several times in the past to no avail. But this year it is different.

This time, the call for reform is coming from people and organizations that previously opposed reform.

This time, because of the reasons I have mentioned, businesses, along with unions that represent their workers, are asking for reform.

This time, patient advocacy organizations and provider groups are calling for health reform.

Make no mistake, reforming health care is not an easy task, and it is one that will require true compromise from everyone across the ideological spectrum.

But it is a task that must be done.

Our country, and the health of its citizens as well as the economy, cannot afford to maintain the status quo.

Next week, the members of the Senate Health, Education, Labor and Pensions Committee and the Senate Finance Committee will begin deliberations on legislation to reform health care.

As the members of these committees gather to discuss and ultimately mark up legislation, I want to take this opportunity to again voice my support for a public option in a menu of insurance options from which people may choose.

I believe a public option is imperative in providing a true choice for all Americans.

Let me stress: this would be a purely voluntary option.

If you like your current plan, you keep it.

But there are too many Americans who do not have real choices when it comes to health insurance, especially those who live in rural areas.

In addition, many large urban areas are dominated by one or two insurers that serve more than 60 percent of the market. In fact, there are seven states where one insurer has over 75 percent of the market share.

A public option can help Americans expand their choice of an insurance provider.

A public option could take various forms, and I think the committees are the proper place to determine the appropriate contours of a public option.

But I want to point out again that right now, today, there are more than 30 State governments that offer their employees a choice between traditional private insurance and a plan that is self-insured by the State. Some States have had them for more than 15 years.

In these 30 States, the market share of the self-funded plans within the market for State employees typically ranges from 25 to 40 percent. This shows a healthy competition between the public option and private insurers, not domination by either type of insurer.

And I want to point out that these arrangements do not seem to be a problem or incite ideological issues at the State level.

Why then, should it be so when discussing health reform on a national level?

A public option can go a long way in bringing more innovation to the delivery system and introducing new measures to reduce cost and improve quality.

A public option can serve as a benchmark for all insurers, setting a standard for cost, quality and access within regional or national marketplaces.

It can have low administrative costs and can have a broad choice of providers. It can give Americans a better range of choices, make the health care market more competitive, and keep insurance companies honest.

And again, the key to all this is that a public option will be just that, an option, not a requirement.

Some people will choose it; others will not. If you like the insurance plan you have now, you keep it.

If you are happy with the insurance you get with your employer, or even the individual insurance market, you stay enrolled in that insurance plan. And if you are unsatisfied with the public option, you have the option to switch back to private insurers.

Americans firmly support the ability to choose their own doctor and value their relationships with their providers. So do I. It is key to any health care plan that Americans have a right to choose their doctor.

An overriding goal of health reform is to increase a patient's access to affordable, quality health care—offering a public option can help increase Americans' choices.

Mr. President, it is time for reform that protects what works and fixes what is broken.

It is time to reform health care so that American businesses can afford to offer health care to their employees.

It is time to reform health care so that all Americans have access to quality, affordable care, regardless of preexisting medical conditions.

It is time to reform health care so that physicians and other providers have less redtape to deal with and more time to spend with patients.

It is time to reform health care so we place a higher priority on prevention and wellness, saving lives as well as money.

It is time to reform health care so all Americans can compare the costs and benefits of different health insurance policies.

And, it is time to reform health care so Americans have more choices and can retain the right to choose their own doctors.

For all these reasons and more, it is time for health care reform.

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

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

The assistant legislative clerk proceeded to call the roll.

Mr. ALEXANDER. Mr. President, I ask unanimous consent for the quorum call to be rescinded.

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

SMALL NUCLEAR REACTORS

Mr. ALEXANDER. Mr. President, I would like to report a tremendous historic development in the ability of our country to have clean air, an effective way to deal with climate change, and enough low-cost, reliable electricity to help keep jobs in this country. Yesterday I attended a press conference from a company, Babcock & Wilcox. Also included was the Tennessee Valley Authority. The company and TVA announced that Babcock & Wilcox will soon make an application to the Nuclear Regulatory Commission for permission to start building and selling a small nuclear reactor that can be built in a factory, shipped by railway to a site, and put together like Lego blocks at the site. The nuclear reactor is a 125-megawatt reactor. That compares with the large nuclear plants, of which we have 104 today in the United States. Those plants produce, on average, 1,000 megawatts of electricity. This would be 125. So the real prospect exists that we will be able to have, in this country, nuclear reactors for electricity that might cost as little as one-tenth as much to build, can be built in 3 years instead of 6, and will produce, as I said, 125 megawatts instead of 1,000—making it easier to integrate them into our electric grid—and can be built in a factory and shipped to a customer.

The reason I am excited about this prospect is it has a real chance of happening. No one has built more small reactors in the world than Babcock & Wilcox, and the Tennessee Valley Authority is the largest public utility in the United States and the only utility in the United States that is currently building a nuclear powerplant.

Republicans and, I am sure, many Democrats, but certainly Republicans in the Senate and the House, unanimously believe our goal as a country ought to be to build 100 new large nuclear powerplants over the next 20 years, while we figure out renewable electricity. The reason we want to do that is we want to deal with climate change. We want clean air, but we want to be able to keep jobs here at the same time. If climate change is the inconvenient problem, nuclear power is the inconvenient solution.

Why is that? Climate change is caused by carbon that comes from coal plants and from a variety of other sources. Forty percent of the carbon that is produced in the United States comes from coal-fired powerplants. But if we are looking for a way to produce electricity in a way that is pollution free and carbon free, 70 percent of all the pollution-free, carbon-free electricity we have today comes from our nuclear plants. Six percent of our clean electricity comes from the Sun, the wind, and the Earth.

One day it may be that we are able to make more of our electricity from the Sun, the wind, and the Earth. But at the moment, not much is available. It is expensive and the Sun is only available when the Sun shines and the wind is only available when the wind blows. If you are wanting to operate your computer, or manufacture an automobile in Illinois or Tennessee, or turn on your light at night, you don't want to have to pray that the wind is blowing or that the Sun is shining. You want reliable, low-cost electricity.

In Tennessee, we are excited about the prospect of, one day, solar energy making a bigger difference in our electrical grid. In fact, two big new plants have moved into our State to make polysilicon, which is the product that goes into the solar cells that go on the top of your house. Each of those plants uses 120 megawatts of electricity. Where will they get that electricity? One reason they are in Tennessee is because the TVA supplies a lot of low-cost, reliable electricity. That comes from coal and nuclear power and a little bit from natural gas in our State. That is pretty much the way it is around the country. Solar power is not yet low-cost, reliable electricity. You can't run the plant making the solar energy products on solar power or wind power today. One day we may, but in the meantime, while we are trying to rebuild the auto industry in Michigan and Illinois and Wisconsin and Tennessee, we want low-cost, reliable electricity. We want our Alcoa plant to stay open in Blount County, in Maryville, where I am from in Tennessee. Why is it closed? The cost of the electricity. What will open it? A 20-year contract on low-cost, reliable electricity. If we say to the Alcoa plant: We will sell you a lot of wind power, they will say: But the wind doesn't blow in our area. If we say: We will sell you solar power, they will say: It is four times as much and we might like to operate a night shift and you can't store it.

But what we will be able to say, in light of this new development we heard about yesterday—we can say to the Alcoa plant, we can say it to Eastman Chemical in Kingsport, we can say it to the two plants making materials for solar cells: We can move in a 125-megawatt nuclear reactor, put it near your site, and supply all the low-cost, reliable electricity you need.

Another use for this new reactor could be to help us clean up our coal plants. We have a clean air problem in Tennessee, as does much of America. I am very much hopeful the Environmental Protection Agency or the Congress or some combination will reinstate the CAIR rule to deal with nitrogen and sulfur and mercury, for our health in this country.

The small reactor might be used as a substitute for coal plants. Some of the coal plants we have in the TVA system and around the country are very old and very dirty. The newest ones are much more efficient and a lot cleaner. It might make sense to take the nuclear reactor, the small one, and put two of them together where an existing coal plant is. There are a lot of possibilities for this. Instead of 100 nuclear plants in 20 years, we may have another option. We may be able to have 400 or 500 small nuclear reactors in 20 years. They may be 125 megawatts here or two together or three together.

My fellow Tennessean, Al Gore, who won the Nobel Prize for his campaign on the dangers of global warming, has a line he often uses about nuclear power. ''Nuclear power may have a role to play,'' Al says, ''but unfortunately, nuclear reactors come only in one size—extra large.''

Until yesterday, you couldn't disagree with the former Vice President. Ever since President Eisenhower beached a 65-megawatt Navy submarine reactor at Shippingport, PA, in 1967, under the Atoms for Peace Program, we have been building reactors bigger and bigger. Most of the ones on the drawing board today, as I mentioned, are at least 1,200 megawatts. I believe we have 17 applications now for new nuclear powerplants. Also, one is being built right now and that is completing an old plant at Watts Bar.

We have not built a traditional large nuclear power plant from start to finish in the last 30 years in the United States. That is quite an irony. We invented the technology. We have used it successfully since the 1950s and without incident in our nuclear Navy. Twenty percent of our electricity comes from our older plants, the ones we built more than 30 years ago. They produce 20 percent of our electricity today and 70 percent of our clean electricity. But for 30 years we have not been building them.

In the meantime, France—that we don't usually like to emulate—has. France is 80 percent nuclear, and they have among the lowest carbon emissions—that contribute to global warming—in the European Union and among the lowest electric rates in the European Union. They are even selling electricity to Germany, which has invested money in solar energy and windmills and stopped nuclear but has found they do not have enough electricity to keep their jobs.

India and China, with our help, are building nuclear powerplants because they want clean, reliable electricity at a low cost.

We have appropriated money to help do that and sign treaties to help do that. Now even our President said the other day that Iran has a right to build nuclear powerplants. Well, if Iran has a right to do it, why don't we do it? We invented it. We are the ones who want low-cost, clean electricity. Let's go ahead and do it. So it will be 20 years, but it takes a long time to get one of those projects through the Nuclear Regulatory Commission. I mentioned there were 17 applications. It takes another 5 or 6 years after you get through the 2- or 3-year process at the Nuclear Regulatory Commission to build these big plants. So that is a long ways.

If you are a utility and all you really need is 300 new megawatts to meet growing demand, this new, more flexible approach—this smaller reactor—is going to lower costs and open the door to more widespread use of nuclear power. It will help us achieve the goal of building 100 new nuclear powerplants in the next 20 years in order to deal with climate change.

To those who are still skeptical of nuclear power, we must say, if global warming is an inconvenient problem, then nuclear power is the inconvenient solution.

Babcock & Wilcox and TVA have shown us this new approach. They have proposed a reactor that can be built in a factory in 3 years, shipped to the site on rails, and fit together like Lego blocks. That is a very original idea. The larger reactors are still going to be necessary. We are going to need the power. But as B&W and the TVA have reminded us, there is more than one way to skin a cat. What we are seeing here today is what the business schools call a disruptive technology. I hope the public and the press will appreciate how the Tennessee Valley Authority is fulfilling its mission as a public utility by taking such a progressive stance on technology.

America's nuclear technology has been falling behind. Of that, there is no doubt. The French, the Japanese, and the Russians are all selling reactors out in the world, to India and China

and other places. This is going to make them sit up and take notice because the concept we saw yesterday is perfect for developing nations that do not have the infrastructure to handle the larger reactors. It is perfect for small towns and factories all over America that may need only 125 megawatts and cannot afford something larger. It is what is called ''distributed generation''—producing electricity onsite instead of wheeling it from deserts or mountaintops hundreds or thousands of miles away. As the old saying goes, ''Small is beautiful.''

One of the things we are going to have to face as we think about what kind of electricity we want for the future is the landscape of America. You know, landscape is a part of our environment as well, and the landscape becomes a real concern. When we look at the energy sprawl that could be created by some of the renewable energy projects, it takes a lot of space to produce a little bit of electricity.

For example, a big nuclear plant can be located on about 1 square mile. That is one that produces 1,000 megawatts. To get that much electricity from biomass, which means woodchips or dead trees, you would need a forest the size of the Great Smoky Mountains National Park—that is 550,000 acres—and the number of trucks that would be coming in and out to haul the stuff in and back out would be in the hundreds every day. You would be talking about millions of tons of woodchips and dead trees a year. So that is for just one big nuclear plant equivalent of electricity. On the other hand, to create the same amount of electricity from wind turbines that you would get from one nuclear plant, you would have to cover about 270 square miles.

In our part of the world, in the foothills of the Great Smoky Mountains, we do not really want to see these 50-story towers with blades that are as long as football fields, with flashing lights on top that can be seen for 20 miles. We do not want to see them along the foothills of the Smokies, and I doubt the people of Virginia want to see them along the Blue Ridge Parkway, and I doubt they want to see them in Pennsylvania or in the White Mountains. And in the Eastern United States, they only work on the ridgetops, and they do not work very well. That is why there is only one wind farm in the entire Southeastern United States. It is in Tennessee and only operates 18 percent of the time, and part of that time is at night when we have a lot of extra electricity. So that does not work very well.

The Senator from California, Mrs. FEINSTEIN, with whom I work on the Appropriations Interior Subcommittee, has expressed her concern about the size of the solar thermal plants proposed for the Mojave Desert, which she has tried to protect for years. They would have to be 5 miles on each side in order to get a decent amount of electricity, and that is only during the daytime.

You have the wind and you have the Sun, but you still need either the coal plant or the nuclear plant. So I believe there is a place for wind: far offshore, the middle of Lake Michigan, or in parts of the wind corridor. I believe there is a great future for solar because solar power comes during the peak times, during the day when we can use it. Perhaps we can use our rooftops to provide the space. So we think that is more promising for our area. I think biomass is useful, but I have already expressed how large an area it would take to produce a little electricity. And we might be able to get a few hundred megawatts out of the Mississippi River by putting turbines in the water.

So how are we going to reindustrialize America over the next 25 years? How are we going to keep those auto suppliers and assembly plants and aluminum plants and even the new plants making solar in our country if we have sky-high costs of unreliable electricity? We need another option.

While we are cleaning up the coal plants, while we are figuring out renewable electricity, we now have another way to skin the cat; that is, the small nuclear reactor, 125 megawatts. That is about the size of electricity that is produced by Fort Loudoun Dam in our State. It is significant, but it is a lot smaller than the big ones we are used to.

What I really hope is that when Americans see this user-friendly reactor sitting underground—that is another aspect: A lot of it, including the storage of the waste, goes underground. Another aspect is it is only two stories tall. Most people think nuclear plants, the big ones—they see these big cooling towers. That is to cool the water that has to be used. But these small ones are air-cooled, so they don't use much water. That is a great advantage. And they are not an eyesore, they are two stories tall. I mean, remember, the wind turbines are 50-stories tall, producing almost no electricity in a consistent way. The nuclear reactor is producing low-cost energy 90 percent of the time, and it is two stories tall.

So I think with this development people may begin to rethink nuclear power. It is already happening out there. People are recognizing that the dangers of nuclear have been widely exaggerated, there is nothing to be fearful about, and once we realize that, we are going to see nuclear power for what it is: an appropriate technology that will enable us to meet our future energy needs without overwhelming the world with pollution and warming the planet.

So I hope my colleagues in the Senate will join me in saying congratulations to Babcock & Wilcox and especially to the Tennessee Valley Authority for leading the country in this renaissance of nuclear energy. Congratulations, good luck, and I hope there are many of these projects on the drawing boards.

This is the way for us to clean the air, deal with global warming, and at the same time have low-cost, reliable electricity in large amounts so that we can keep our jobs here.

There is one other aspect to this that I ought to mention. As we talk about the different forms of energy, people worry that so much of what it takes to build the wind turbines or the solar plants or even the large nuclear plants, and how they may be manufactured overseas and that the jobs are there and not here. All of the jobs for the small nuclear reactors will be in the United States—virtually all of them. So this is not only American-made energy, all of the parts that go to building what I hope will be hundreds of these small reactors over time can be made and will be made right here in the United States.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. THUNE. Madam President, I ask unanimous consent that I be allowed to speak as in morning business.

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

(The remarks of Mr. THUNE pertaining to the introduction of S. 1242 are printed in today's RECORD under ''Statements on Introduced Bills and Joint Resolutions.'')

HEALTH CARE REFORM

Mr. THUNE. Madam President, I wish to say I have great concern not just about the ownership interests the Federal Government already has in financial institutions and in auto companies and in insurance companies but also about what we are hearing might happen with health care.

My view is, having a government plan, a government takeover of health care would again be an intervention into the marketplace on a scale and on a level I don't think most Americans want to see. It is referred to around here as a public plan option, but let's call it what it is: It is a government plan. It is a government-run health care system. The more you have the government involved in the decisions with respect to health care, the more the government is going to dictate many of the decisions that are going to be made and traditionally are made between a patient and a physician, in consultation with each other, between a consumer and a health care provider. Those types of interactions occur today in the marketplace. If the government is imposed into that particular situation, it seems to me at least we are going to have the government making more and more decisions with respect to health care: Which treatments are going to be approved;

which ones are effective; which ones are cost-effective. And that critical, fundamental relationship between a physician and a patient, we could be creating barriers in that relationship that are not going to provide for the high quality, optimum level of health care and treatment we have experienced in this country for a long time.

Clearly, I think we all have to acknowledge there are things that need to improve in the health care system in this country. We need to reform our health care system. We need to bring the costs down. We need to figure out ways to make health care available and accessible to more Americans so that many of those who don't have health care have access to it and to get costs under control. But there are lots of ways that can be done by building upon the strengths we have in the current system; not throwing it completely away in exchange for a government-run system, which would ration health care, limit the amount of choices Americans would have, and cost the taxpayers an awful lot of money. Because I think, at the end of the day, most of the estimates that have been done—and it is hard to know because we don't have a specific proposal out there yet that has been costed or a revenue source that has been identified for it, but I think all the estimates we have seen so far suggest that this plan, the health care plan that is being proposed by the President and by the Democratic leadership in the Congress, is going to cost somewhere in the neighborhood of $1 trillion to $2 trillion. We don't know exactly. I have heard $1.2 trillion, $1.5 trillion. I have heard up to $2 trillion, but we know that is an enormous amount of money, and that revenue has to come from somewhere. One-sixth of the American economy today, one-sixth of our economy, entire economy in this country is health care, headed toward one-fifth. So we are going to hand the keys over to the Federal Government and allow them to control an enormously large component of the American economy—one-sixth of it today and it will be one-fifth in just a few years. It seems to me that would be a bad precedent and something, again, that would lead us further and further down a path of greater control for the Federal Government in our private economy. I don't think that is good for health care for Americans. I don't think that is good again for American business, for the economy or for our ability to create jobs.

The bill I introduced, as I said, is designed to get at the TARP moneys that are going to be paid back in and hopefully getting the government out of the car business, the government out of the banking business, and the government out of the insurance business, but I also view those as almost what I would characterize as gateway drugs that are going to lead the way for the nationalization or the government takeover of health care. A government plan is not a good way to do business, and it is certainly not in the best interests of Americans, who, I think, even though there may be those who want to see the costs of our current health care system come down, those who have coverage today, most of them would argue we have a system that is pretty effective; that when you need to get seen by a doctor, when you need to get treated, when you need to use some of the modern equipment and technology we have available and that is there today—and I think that is very much in jeopardy if you allow the government to intervene and to impose itself into that decision-making process and begin to ration care.

DEBT AND DEFICITS

Mr. THUNE. Madam President, one final point I wish to make is all of this sort of ties back to what I think is the pattern, the precedent we have seen so far in this Congress, and that is incredible amounts of spending, incredible amounts of borrowing. The stimulus bill started it off to the tune of about $800 billion. The budget we passed this year on the discretionary, nondefense domestic side was 8.9 percent more year over year than the previous year. The omnibus bill we passed—which was unfinished business from the last Congress—was 8.3 percent over the previous year, which, again, more than doubled the rate of inflation. We have all these Federal obligations and liabilities that are being created by virtue of these interventions in the marketplace. We have the TARP program; we have all this taxpayer exposure out there, all this spending, and this year we know we are going to have a $1.8 trillion deficit which dwarfs anything we have ever seen in history and as far as the eye can see. For the next decade, we are looking at about a $1 trillion, on average, annual deficit.

Our debt to GDP is headed to historically high levels if predictions are accurate. I think the predictions are optimistic in terms of what we are going to see in economic growth, unemployment, inflation, and interest rates. Even if the projections with respect to the economic indicators are accurate, we are going to see, 10 years from now, the public debt, as a percent of the GDP, reach over 80 percent—a rate we have not seen literally since the end of World War II.

These are very troubling signs. I think they should be warning flags, warning signs to the people in this country that this level of borrowing, the amount of spending, the amount of taxation, with the new obligations in the health care bill, is too much for our economy to bear and for the American taxpayer to bear.

What the President came out with earlier this week is a new announcement that, all of a sudden, we have gotten religion, and we are going to submit all of the new spending and all of these programs now to what is known as pay-go. I will submit for the RECORD an editorial from the Wall Street Journal from a couple days ago.

I ask unanimous consent that it be printed in the RECORD.

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

[From the Wall Street Journal, June 11, 2009]

THE ''PAYGO'' COVERUP

Some things in politics you can't make up, such as President Obama's re-re-endorsement Tuesday of ''pay-as-you-go'' budgeting. Coming after $787 billion in nonstimulating stimulus, a $410 billion omnibus to wrap up fiscal 2009, a $3.5 trillion 2010 budget proposal, sundry bailouts and a 13-figure healthcare spending expansion still to come, this latest vow of fiscal chastity is like Donald Trump denouncing self-promotion.

Check that. Even The Donald would find this one too much to sell.

But Mr. Obama must think the press and public are dumb enough to buy it, because there he was Tuesday re-selling the same ''paygo'' promises that Democrats roll out every election. Paygo is ''very simple,'' the President claimed. ''Congress can only spend a dollar if it saves a dollar elsewhere.''

That's what Democrats also promised in 2006, with Nancy Pelosi vowing that ''the first thing'' House Democrats would do if they took Congress was reimpose paygo rules that ''Republicans had let lapse.'' By 2008, Speaker Pelosi had let those rules lapse no fewer than 12 times, to make way for $400 billion in deficit spending. Mr. Obama repeated the paygo pledge during his 2008 campaign, and instead we have witnessed the greatest peacetime spending binge in U.S. history. As a share of GDP, spending will hit an astonishing 28.5% in fiscal 2009, with the deficit hitting 13% and projected to stay at 4% to 5% for years to come.

The truth is that paygo is the kind of budget gimmick that gives gimmickry a bad name. As Mr. Obama knows but won't tell voters, paygo only applies to new or expanded entitlement programs, not to existing programs such as Medicare, this year growing at a 9.2% annual rate. Nor does paygo apply to discretionary spending, set to hit $1.4 trillion in fiscal 2010, or 40% of the budget.

This loophole matters, because on the very day Mr. Obama was hailing paygo the House Appropriations Committee was gleefully approving a 12% increase in 2010 nondefense discretionary spending, the third year running that Democrats have proposed double-digit increases. Or consider that the 2010 budget resolution included a $2 billion increase for low-income heating assistance as an entitlement change that should be subject to paygo. But Congressional Democrats simply classified it as discretionary spending, thereby avoiding the need for $2 billion in cuts elsewhere. C'est-la-paygo.

Mr. Obama's new proposal includes even more loopholes. There's an exception for Congress's annual alternative-minimum tax ''patch,'' which is worth at least $576 billion over 10 years; for any of the Bush tax cuts that Mr. Obama decides he wants to extend past 2010; and to protect against planned cuts in Medicare doctor payments. These carve-outs alone spare Democrats from having to come up with some $2.5 trillion in spending cuts or new taxes. To add insult to profligacy, the rules also allow the Administration to run huge early deficits for its looming health-care bonanza, and only pay for it later—say, after 2012.

The President also revived the myth that paygo was somehow responsible for eliminating budget deficits during the Clinton

years. In fact, that brief era of balanced budgets was due to: mid-decade spending reductions by a GOP Congress elected on a balanced-budget pledge; an excessive cut in defense spending to 3% from 5% of GDP across the decade; and an unsustainable revenue boom due to the dot-com bubble. But harking back to the 1990s lets Mr. Obama avoid having to defend his own spending record.

The real game here is that the President is trying to give Democrats in Congress political cover for the health-care blowout and tax-increase votes that he knows are coming. The polls are showing that Mr. Obama's spending plans are far less popular than the President himself, and Democrats in swing districts are getting nervous. The paygo ruse gives Blue Dog Democrats cover to say they voted for ''fiscal discipline,'' even as they vote to pass the greatest entitlement expansion in modern history. The Blue Dogs always play this double game.

The other goal of this new paygo campaign is to make it easier to raise taxes in 2011, and impossible to cut taxes for years after that. In the near term, paygo gives Mr. Obama another excuse to let the Bush tax cuts he dislikes expire after 2010, while exempting those (for lower-income voters) that he likes. In the longer term, if a GOP Congress or President ever want to cut taxes, paygo applies a straitjacket that pits those tax cuts against, say, spending cuts in Medicare. The Reagan tax reductions would never have happened under paygo.

The main political question now is when Americans will start to figure out Mr. Obama's pattern of spend, repent and repeat. The President is still sailing along on his charm and the fact that Americans are cheering for an economic recovery. But eventually they'll see that he isn't telling them the truth, and when they do, the very Blue Dogs he's trying to protect will pay the price. And they'll deserve what they get.

(Mr. BEGICH assumed the Chair.)

Mr. THUNE. Mr. President, I will make a couple of observations they made in that editorial, as well as similar observations made by some of my colleagues in the Senate, since this announcement was made—that pay-go is going to now be enforced—statutory pay-go.

This editorial from the Wall Street Journal said:

The truth is that paygo is the kind of budget gimmick that gives gimmickry a bad name. As Mr. Obama knows but won't tell voters, paygo only applies to new or expanded entitlement programs, not to existing programs such as Medicare, which this year is growing at a 9.2 percent annual rate. Nor does paygo apply to discretionary spending, set to hit $1.4 trillion in fiscal year 2010, or 40 percent of the entire [Federal] budget.

Mr. President, the thing that strikes me about this announcement is, it seems it is, as is often said, too much, too little, too late. We already passed an $800 billion stimulus bill, which we financed by borrowing from the next generation. That wasn't subject to pay-go nor have many of the spending programs in the past couple of years been subject to pay-go.

When the Democrats took control of the Congress after the 2006 elections, it was announced by Speaker PELOSI that they were going to enact pay-go—saying pay-go is going to be the policy, the rule followed in terms of the spending done by the Federal Government. But that was quickly ignored. As I said before, if we look at the reality of what happened in the last few years, despite all the lipservice paid to pay-go, it doesn't apply all that much. It applies to new entitlement programs and to tax cuts, but as far as I can tell, it doesn't apply to discretionary spending, to current entitlement spending, which, as I said earlier, is growing—Medicare at about a 9.2-percent annual clip. So what is it really good for?

Well, it seems to me it is a statutory excuse to raise taxes. If we continue to exempt more and more things—one of the things we debated in the last year or two is whether an extension or exemption will be afforded to taxpayers from the AMT, which would capture more taxpayers, and whether it ought to be offset and paid for and the pay-go rules ought to apply to it.

Well, the President, in his announcement a couple days ago, went so far as to say he is going to exempt the AMT fix from pay-go. That is a $576 billion ticket item over a 10-year period. The AMT would be exempted. The physician fee fix would be exempted, which is something we have had to do recently in Congress on a regular basis to protect doctors from the cuts that would occur under statutes passed many years ago. So we come in and we do what we call a physician fee fix. That will be exempted from the pay-go rules.

So we would be carving out big chunks of Federal spending, of tax relief, and there were a couple of other exemptions that were mentioned that would be exempt from pay-go. If we take them off the table, and if we take entitlement spending off the table—at least current, present entitlement spending—and we take discretionary spending off the table, it seems to me all we have done is, again, created this gimmick that is trying to pull the wool over the eyes of the American people that we are really doing something serious about fiscal responsibility which, in fact, we all know is not the case.

Mr. President, I hope we get serious about fiscal responsibility here. It means we have to get our arms around spending. We cannot fix the fiscal problems in this country when we exempt everything and say we are going to continue to spend—in fact, the appropriations bill passed in the House of Representatives the other day; they passed one of their appropriations bills with a 12-percent increase over last year. How can we justify that when we have a $1.8 trillion deficit this year and an economy that is in recession? The Federal Government is supposed to be leading the way, setting the example, and we cannot even live within our means. We say we are going to implement pay-go and, boom, before the ink is even dry on whatever statement they may have signed, we have a House Appropriations subcommittee passing an appropriations bill with a 12-percent year-over-year increase. And, again, because discretionary spending is exempt from pay-go, what difference does this announcement on pay-go really make, other than to try to pull the wool over the eyes of the American people?

I hope the American people figure that out. I think they will. I certainly know, around here at least, we get new data all the time about the size of the deficit and what we are going to look at in the foreseeable future. It is a very disturbing picture. That is why I think it is so important we get spending under control, that we get the Federal Government out of the private ownership of American business, and let American business do what it does best: create jobs and make their own management decisions, not the Federal Government, because it controls such a big part of these businesses, intervening and trying to impose their political will on this decisionmaking process, and that we do everything we can to prevent a government takeover of our health care system, at a cost of somewhere between $1 trillion and $2 trillion, which will inevitably lead to much higher taxes.

Somebody has to pay. These things all have to be paid for or we can borrow it, which is what we did with the stimulus bill. So we can have higher taxes or more borrowing. I argue the spending has to stop. That is the only way we are going to get our fiscal house in order and make it clear to the American people we are serious in Washington about getting spending under control. I hope we get a vote on my exit plan, my bill. I think we need a plan to exit the scene and get government out of the ownership of large parts of the private economy and private businesses in this country. I hope we will do everything we can to prevent a government takeover of our health care system, which is one-sixth of our economy.

I also hope we will not fall for dumb gimmicks like pay-go, which do nothing to address, fundamentally, the financial and fiscal problems our country faces, but that we will get serious about getting spending under control and putting America on a fiscal path toward fiscal discipline that is fair and responsible to the people in this country, who pay these bills, the American taxpayers.

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

EXPRESSION OF APPRECIATION

Mr. REID. Mr. President, I walked in the Chamber and saw you presiding. And I said to Lula Davis, who helps us so much here, what a terrific addition

you have been to the Senate. That is really true. The people of Alaska are so fortunate to have you in the Senate.

You are very constructive. You protect the State of Alaska like no one I have ever seen look out for the interests of a State.

And I think everyone in the Senate recognizes what a fine person you are, and as the days go on, you are going to get even better. So on a personal note, I appreciate all of your good work.

(At the request of Mr. REID, the following statement was ordered to be printed in the RECORD.)

FLAG DAY

• Mr. BYRD. Mr. President, our flag is the most recognizable symbol of the United States, an instant wordless message freighted with history and meaning. The Stars and Stripes is much more than a war banner. Each flag carries visions of smoke-clouded battles, to be sure, but also visions of brave explorers venturing into new lands, astronauts landing on the moon, athletes celebrating Olympic victories, and of coffins carried on somber caissons to a final honored resting place. Old Glory also marks every great American moment, from presidential inaugurations that celebrate the peaceful transition of power in our democracy to the defiant unfurling of flags over the battered ruins of the Pentagon and the Twin Towers.

June 14 is Flag Day. Although flags fly every day in front of many Federal, State and local office buildings every day, and many flags are displayed on other holidays such as the Fourth of July, Memorial Day, and Veterans Day, only on Flag Day do we honor the flag itself.

The first national observance of Flag Day was in 1877, though it was not until 1949 that President Truman signed into law legislation recognizing the anniversary of the adoption, on June 14, 1777, by the Continental Congress, of the Stars and Stripes as the official flag of the United States.

In earlier years, much more was done to mark the occasion of Flag Day. Schools educated students on the rituals and principles of citizenship, and held patriotic programs to honor the flag. These days, it is enough to mark the day by flying the flag. I hope that many Americans will do so, and do it properly—hoisting the flag up smartly, bringing it down reverently, and folding it away again properly. Once it is up and flapping in the breeze, take just a moment to admire it, or to say the Pledge of Allegiance.

On June 14, 1777, a congressional committee established the design of our flag in a few short words. The record notes simply that ''. . . the flag of the thirteen United States be thirteen stripes alternate red and white; that the union be thirteen stars, white in a blue field, representing a new constellation.'' In the years since, the number of stars in that constellation has expanded, but the brave ideals that it represents—that all men were created equal, endowed by their Creator with certain unalienable rights including life, liberty and the pursuit of happiness—shine as true today as they have since 1776.

Our flag is a symbol that goes well beyond the cloth out of which it is fashioned. It is America, and long may it wave.

I close with a favorite poem of mine, by Henry Holcomb Bennett, that I like to recite on Flag Day. It never fails to stir my spirits, as I hope it does for those listening.

THE FLAG GOES BY

(By Henry Holcomb Bennett)

Hats off!
Along the street there comes
A blare of bugles, a ruffle of drums,
A flash of color beneath the sky:
Hats off!
The flag is passing by!

Blue and crimson and white it shines,
Over the steel-tipped, ordered lines.
Hats off!
The colors before us fly;
But more than the flag is passing by.

Sea-fights and land-fights, grim and great,
Fought to make and to save the State:
Weary marches and sinking ships;
Cheers of victory on dying lips;

Days of plenty and years of peace;
March of a strong land's swift increase;
Equal justice, right, and law,
Stately honor and reverend awe;

Sign of a nation, great and strong
Toward her people from foreign wrong:
Pride and glory and honor,—all
Live in the colors to stand or fall.

Hats off!
Along the street there comes
A blare of bugles, a ruffle of drums;
And loyal hearts are beating high:
Hats off!
The Flag is passing by!•

XLIV COMPLIANCE

Mrs. LINCOLN. Mr. President, paragraph 4 of rule XLIV of the Standing Rules of the Senate provides that, ''If during consideration of a bill or joint resolution, a Senator proposes an amendment containing a congressionally directed spending item, limited tax benefit, or limited tariff benefit which was not included in the bill or joint resolution as placed on the calendar or as reported by any committee, in a committee report on such bill or joint resolution, or a committee report of the Senate on a companion measure, then as soon as practicable, the Senator shall ensure that a list of such items (and the name of any Senator who submitted a request to the Senator for each respective item included in the list) is printed in the CONGRESSIONAL RECORD.''

The term ''congressionally directed spending item'' is broadly defined to include ''a provision or report language included primarily at the request of a Senator providing, authorizing, or recommending a specific amount of discretionary budget authority, credit authority, or other spending authority for a contract, loan, loan guarantee, grant, loan authority, or other expenditure with or to an entity, or targeted to a specific State, locality or Congressional district, other than through a statutory or administrative formula-driven or competitive award process.'' In accordance with rule XLIV, I provide the following information relating to my amendment. No. 1181, that was adopted by the Senate during consideration of H.R. 2346. The amendment will modify interest limitations allowable in a State, as defined in 12 USC 1831 u(f), where the maximum rate of interest is not more than 5 percent above the Federal Reserve discount rate—Arkansas. Specifically, it will relax the maximum rate of interest allowed, increasing it to seventeen percent, effective from date of enactment through December 31, 2010. The provision is generally applicable to any lending occurring within that state that is not conducted by an insured depository institution. I am the principal sponsor of the amendment.

Mrs. HUTCHISON. Mr President, I submit pursuant to paragraph 4(a) of rule XLIV of the Standing Rules of the Senate the following congressionally directed spending item that I requested during consideration of H. R. 2346, the fiscal year 2009 supplemental appropriations bill, and I ask that it be printed in the RECORD.

The material follows.

For purposes of qualification for loans made under the Disaster Assistance Direct Loan Program as allowed under Public Law 111–5 relating to disaster declaration DR–1791 (issued September 13, 2008) the base period for tax determining loss of revenue may be fiscal year 2009 or 2010.

Mr. President, I submit pursuant to paragraph 4(a) of rule XLIV of the Standing Rules of the Senate the following congressionally directed spending item that I requested during consideration of H. R. 2346, the fiscal year 2009 supplemental appropriations bill, and I ask that it be printed in the RECORD.

The material follows.

For areas affected under FEMA–1791–DR, 100 percent federal funding under the Public Assistance Program for debris removal, 90 percent federal funding for all other categories of public assistance, and 90 percent federal funding for Hazard Mitigation.

SBIR/STTR REAUTHORIZATION ACT OF 2009

Ms. SNOWE. Mr. President, I rise today to speak on support of S. 1233, the SBIR/STTR Reauthorization Act of 2009, a bipartisan measure I recently introduced with Senator LANDRIEU. As former chair and now ranking member of the Senate Committee on Small Business and Entrepreneurship, I have long championed critical small business programs such as the Small Business Administration's Small Business Innovation Research, SBIR, and Small Business Technology Transfer, STTR, programs, which direct more than $2 billion in Federal research and development—R&D—funding each year to

small businesses across our nation to encourage them to innovate and commercialize new technologies, products, and services. Our legislation would provide key improvements to the SBIR and STTR programs, which were last reauthorized in 2000 and 2001, respectively.

As our Nation emerges from this devastating recession, the worst since World War II, we must ensure that America once again brings to bear the kind of ingenuity, creativity, and innovation that made America and our free market economy the greatest, most powerful on Earth. Indeed, innovation is the ''space race'' of the 21st century—only this time it is not the U.S. versus Russia; it is the U.S. versus every nation that is jockeying for the lead position and an economic foothold.

The bill we have introduced will greatly help America win this race. It is structured upon a comprehensive measure that our committee passed unanimously, on a bipartisan basis in both the 109th and 110th Congresses. Our legislation includes commonsense enhancements intended to incentivize more small businesses to participate in these vital programs. The bill would increase the size of phase I program awards from $100,000 to $150,000, and phase II awards from $750,000 to $1 million. It would also peg future award increases to inflation. These pivotal reforms represent a well-spring of indispensable technological-fuel to the small business engines that drive our Nation's innovation.

Since the SBIR program was created in 1982, small technology firms have received more than 77,000 awards worth approximately $24 billion. The SBIR program has tremendous job creation potential. A recent National Academy of Sciences study, which focused on firms winning phase II SBIR awards in fiscal years 1992 through 2002 found that, as a result of their SBIR award, small firms were able to hire an average of 2.4 employees, retain 2.1 more, and over time these firms, on average, each generated 30 jobs.

Our legislation would increase the SBIR allocation—currently 2.5 percent of Federal agencies' extramural R&D funds—by 1 percent over 10 years and double the STTR allocation over 5 years to 0.6 percent. By doubling the percentage of Federal R&D dollars that the STTR program receives each year, and increasing the SBIR percentage by 1 percent over 10 years, we will infuse another $1 billion into the small business economy. With our economy reeling, the SBIR and STTR programs are more essential than ever, if we are to capitalize on the groundbreaking capacities of our Nation's pioneering small businesses.

While innovation in areas such as genomics, biotechnology, and nanotechnology present new opportunities, converting these ideas into marketable products involves substantial funding challenges. Many small businesses simply cannot afford the exorbitant cost of developing and bringing a product into the marketplace. In order to confront this challenge, this legislation offers a compromise solution to the venture capital issue that has recently divided members of this committee and the SBIR community. Last Congress, I worked with Senators KERRY, BOND, LIEBERMAN, COLEMAN, and others, to develop a key compromise on this issue that would permit limited venture capital investment in the SBIR program.

Our bill retains this bipartisan compromise and would allow limited involvement of firms majority-owned by venture capital companies in the SBIR program. Specifically, a maximum of 18 percent of SBIR funding at the National Institutes of Health and 8 percent at all other qualifying agencies may be directed to small firms majority-owned by venture capital companies. Our compromise was strongly supported by the stakeholder community, and is consistent with the recent findings of the National Academy of Sciences and Government Accountability Office regarding venture capital investment in SBIR awardees. Additionally, we leave in place well-established SBA ''affiliation'' rules designed to preserve the intent of the SBIR program by limiting participation to small businesses.

Other key provisions in this vital legislation include the reauthorization and enhancement of my SBIR Defense Commercialization Pilot Program. Senator KERRY and I created this program in the 108th Congress to encourage the award of contracts to SBIR firms. In addition, we would offer this program to all other participating agencies. The bill also would reauthorize and increase funding from $2 million to $5 million for the Federal and State partnership program which would allow each state—including Maine—to receive funding in the form of a grant to make available an array of services in support of the SBIR program.

Now, more than ever, we in Congress must do everything within our power to help small businesses drive the recovery of our economy. It is imperative that we reauthorize the SBIR and STTR programs, particularly before the program terminates at the end of July. I look forward to working with my colleagues on both sides of the aisle to pass this vital measure in the committee and full Senate, as we move forward to reauthorize these vital programs.

NOMINATION OF STANLEY McCHRYSTAL

Mr. FEINGOLD. Mr. President, I oppose the nomination of LTG Stanley McChrystal to command U.S. forces in Afghanistan for two reasons. The first relates to a classified matter about which I have serious concerns. I have conveyed those concerns in a letter to the President. The second issue is interrogation.

At his public confirmation hearing, General McChrystal responded to a question from Chairman LEVIN regarding interrogation policies that ''included stress positions, the use of dogs and nudity'' by stating that ''[s]ome of them were in use when I took over, sir, and then, as we immediately began to reduce that.'' When asked whether he was ''uncomfortable with some of the techniques'' in use, he replied ''[w]hen I took over, I was.''

However, following the hearing, Chairman LEVIN sent General McChrystal a question for the record describing many of the 14 interrogation techniques not listed in the Army Field Manual that were authorized under General McChrystal's command, up until May 6, 2004, when CENTCOM Commander General John Abizaid suspended the use of all such techniques. Chairman LEVIN's question then described a request from General McChrystal, submitted 3 weeks after the suspension, to continue using a number of these techniques, including ''sleep management,'' ''environmental manipulation,'' and ''control positions.'' The request defined ''control positions'' as ''requiring the detainee to stand, sit, kneel, squat, maintain sitting position with back against the wall, bend over chair, lean with head against wall, lie prone across chairs, stand with arms above head or raised to shoulders, or other normal physical training positions'' and requested that ''in the most exceptional circumstances, and on approval from [the commander]'' interrogators be allowed to ''use handcuffs to enforce the detainee's position.''

Asked to square his public testimony with this record, General McChrystal responded that, when he took command in 2003, he reviewed the interrogation program and, in March 2004, ''reduc[ed] the frequency of use of several of the techniques'' by requiring high-level approval. He also looked to ''increase the effectiveness of the entire process and make it more humane'' but offered no specifics other than ''improved facilities'' and improvements in the use of other, non-''enhanced'' techniques. General McChrystal then acknowledged that he personally requested approval from General Abizaid to continue using several of the techniques that had just been suspended, including ''control positions.'' General Abizaid rejected the use of ''control positions,'' and, according to the Senate Armed Services Committee report, the use of ''hooding.''

I have numerous concerns, both about this history and about General McChrystal's public testimony. I have long opposed any interrogation techniques, whether conducted by the U.S. military or the intelligence community, that are not authorized by the Army Field Manual. I am thus dismayed by General McChrystal's personal support for the use of some of

these techniques, particularly the so-called control positions, and by his efforts to continue the techniques after they had been suspended. And, while I have no reason to believe that General McChrystal would not adhere to current law and policy, I am troubled by his failure to express any regret for his previous positions. Finally, I am concerned about General McChrystal's public testimony, which sought to convey that he was ''uncomfortable'' with various interrogation techniques and sought to ''reduce'' their use. Given the full history of his approach to interrogations, this testimony appears to be incomplete, at best.

NORTHWESTERN'S NCAA CHAMPIONS

Mr. BURRIS. Mr. President, it is with great pleasure and sincere pride that I congratulate the Northwestern University women's lacrosse team on winning another NCAA Championship.

As a lifelong Illinoisan and an avid sports fan, I am happy to celebrate the tremendous accomplishments of these young women.

In a crowded field of worthy contenders from across the Nation, this Wildcat team rose to the occasion and claimed a fifth straight national title.

Their consistency, grit, and determination is exemplified by their perfect record for the season: 23 to 0, capped off by a resounding victory over the third-ranked North Carolina Tar Heels.

The Northwestern women's lacrosse team also consistently ranks in the top 10 to 15 percent of academic achievement in the NCAA's Annual Academic Report.

It is clear from their record that the Wildcats excelled every time they took the field, but, more importantly, they excelled in the classroom and in the community.

I am proud of this team because they recognized that ''student'' is supposed to come before ''athlete'' in the phrase ''student athlete.''

For many athletes, college sports have become a launching pad for fame and fortune, but on this team you may find doctors, lawyers, and maybe even a senator or two.

Although the games may not have been broadcast to a national audience or as widely covered by the media, the women's lacrosse team deserves just as much recognition as their male counterparts.

They have sacrificed sleep for early morning workouts, weekends for competition, and played a sport that practically requires the commitment of a full-time job, but all the while, they continued to attend class and maintain their studies.

College athletics require a remarkable amount of dedication, and this team deserves notable recognition even if their scores weren't reported on the nightly news or the front page of newspapers. Their demonstrated character and sportsmanship marks them as role models for aspiring athletes throughout the State. Their athletic performance and strong record of academic achievement place them at the pinnacle of intercollegiate success. Although several players may be honored with individual awards, this national title belongs to each and every member of the team.

This victory reminds us that we have the chance to shine only with the support of our comrades, our friends, our teammates. It is through persistent and concerted effort that we reach our potential, and when we inevitably fall, it is only through the strength and grace of our friends that we can pick ourselves up and journey onward.

The teamwork displayed by these young women throughout the season, even under mounting pressure and enormous expectations, allowed them to carry the day. They have done their university, and their State, proud. We should all draw inspiration from their fine example.

With this championship, the Northwestern Wildcats have cemented their position as the top Lacrosse program in the country. They are quickly approaching the record of seven consecutive titles currently held by Maryland, and, like many Illinoisans, I can hardly wait for what will surely be an exciting season next year.

It is with great pride that Senator DURBIN and I come together to celebrate this national championship. And we are proud to offer a Senate resolution congratulating these talented athletes.

In the spirit of good sportsmanship displayed by the Northwestern women's lacrosse team throughout the season, I ask my colleagues to join with us in congratulating these student athletes on their remarkable accomplishment.

ADDITIONAL STATEMENTS

COMMENDING JOSHUA FAIRLEY

● Mr. COCHRAN. Mr. President, I would like to continue the efforts of Senator KAUFMAN and the Partnership for Public Service by honoring an outstanding federal employee in Mississippi.

Public servants fulfill remarkable duties in the government, and their accomplishments deserve grateful recognition.

Mr. Joshua Fairley, an employee at the U.S. Army Corps of Engineers, Engineer Research and Development Center, USACE–ERDC, in Vicksburg, is a distinguished public servant for his development of new technology to improve the detection accuracy of improvised explosive devices for our Armed Forces. Improvised explosive devices are commonly used in terrorist attacks and have become a principal source of fatalities for men and women in the U.S. Armed Forces.

Mr. Fairley's new technology has resulted in a 75 percent improvement rating for detection accuracy. This Mississippian has used his intelligence to serve our country and protect our troops.

Mr. Fairley was inspired to become a Federal employee because of his desire to make a difference, and he has done so by recognizing challenges and using his skills to overcome them.

I am glad that Senator KAUFMAN has initiated this effort; our Federal employees deserve recognition for the important role they fill.

Mr. Fairley is committed to our Nation, and his contributions have made him the prime example of an outstanding Federal employee.●

125TH ANNIVERSARY OF BLUNT, SOUTH DAKOTA

● Mr. JOHNSON. Mr. President, today I recognize the community of Blunt, SD, on reaching the 125th anniversary of its founding. Blunt is a rural community infused with hospitality, beauty, and an exceptional quality of life.

The city of Blunt was settled in 1884 and named after the chief engineer of the Chicago and Northwestern railway, Mr. John E. Blunt. Few early railroad towns in South Dakota were able to boast of the wide variety of early establishments, including 6 hotels, 12 grocers, 9 lumber yards, 5 saloons, and 4 bakeries.

Today, Blunt has come a long way from its days as a railroad supply center. The town still boasts a variety of businesses, including those in both the service and manufacturing sectors. The Graham Mentor Museum and the REA building are just two examples of continuous efforts to bring the community closer.

The people of Blunt celebrate this momentous occasion on the weekend of June 26–28, 2009. South Dakota's small communities are the bedrock of our economy and vital to the future of our State. It is especially because of our small communities, and the feelings of loyalty and familiarity that they engender, that I am proud to call South Dakota home. Towns like Blunt and its citizens are no different and truly know what it means to be South Dakotan. One hundred and twenty-five years after its founding, Blunt remains a vital community and a great asset to the wonderful State of South Dakota. I am proud to honor Blunt on this historic milestone.●

150TH ANNIVERSARY OF ELK POINT, SOUTH DAKOTA

● Mr. JOHNSON. Mr. President, today I pay tribute to the 150th anniversary of the founding of the community of Elk Point, SD. After 150 years, this historic community will have a chance to reflect on its past accomplishments and its future goals, and I congratulate this thriving community for all it has done.

Elk Point's colorful history begins with the Lewis & Clark expedition of 1804 when the explorers camped in this area in 1804 and again in 1806. Eli Wixson built a cabin in 1859, becoming the first citizen of Elk Point.

Today, Elk Point's location makes it an ideal location for a variety of businesses with two Interstate 29 exits, a railway hub with service in three directions, and close proximity to the Missouri River for both economic and entertainment purposes. This thriving town is the county seat of Union County, the ninth fastest growing county in the Unites States in terms of family income.

Elk Point exemplifies a traditional South Dakota community with its close-knit community with a high quality of life. The citizens are independent and welcoming, and the educational system is advanced with modern technology and advanced placement classes.

The citizens of Elk Point will be celebrating their rich heritage June 26–28, 2009 with an All-Class Reunion, Amy's Race for breast cancer research, and various games and entertainment. I congratulate the citizens of Elk Point on their accomplishments over the last 150 years and look forward to seeing their future endeavors.●

125TH ANNIVERSARY OF IMMANUEL LUTHERAN CHURCH OF CANOVA, SOUTH DAKOTA

● Mr. JOHNSON. Mr. President, today I recognize Immanuel Lutheran Church of Canova, SD, on reaching the 125th anniversary of its founding. This historic church has been a cornerstone of both the community and the Synod. Immanuel Lutheran Church has seen its share of struggles, but has always grown stronger from them. Today, I pay tribute to both the anniversary of the church and to the members who have kept its traditions of service and faith alive for 150 years.

The church was founded in 1884 with Rev. J. Reyhout as its pastor. The members, mainly German immigrants, joined the Ohio Synod and built the first church in 1891. The current church was completed in 1914. Known as the ''German Church'' or ''German Lutheran'', the congregation's welcome spirit for recent immigrants led to services being held in German. In 1940, they transitioned to every other week in English and German. In 1952, German services were discontinued. Immanuel joined the Evangelical Lutheran Church in America in 1988 on its founding.

Although changes have been coming to this community since its founding, Immanuel Lutheran Church has held steady to the core values that it was founded on. With outreach to the prison, food shelters, and the community, these members have maintained the initial ideals of service and devotion. I congratulate this congregation on reaching this monumental anniversary, and look forward to the future as they continue their traditions.●

125TH ANNIVERSARY OF LEBANON, SOUTH DAKOTA

● Mr. JOHNSON. Mr. President, today I recognize the community of Lebanon, SD, on reaching the 125th anniversary of its founding. This historic anniversary gives the community the chance to reflect on their strong history as well as their optimistic future.

Lebanon was founded by farmers in 1883. Small businesses quickly sprung up in the town and continued to grow for 50 years. In 1926, they built an outdoor swimming pool, which is the oldest of its type today. Lebanon was given two cedar trees by the government of the Country of Lebanon, one of which still lives today.

To celebrate the town's achievement, there will be a weekend of festivities from June 20–21, 2009, with a parade, tractor pull, and various entertainers. While the population of Lebanon has declined, the spirit of the town maintains their strong work ethic and united spirit. Small towns like Lebanon are the backbone of South Dakota, and the people of this community make me proud to represent them.●

100TH ANNIVERSARY OF McLAUGHLIN, SOUTH DAKOTA

● Mr. JOHNSON. Mr. President, today I rise in order to pay tribute to the community of McLaughlin on reaching its 100th year. This strong town was founded as a railroad community for refueling and replenishment, as well as a center for Indian trade. In celebration of their centennial, there will be a tractor pull, parade, and entertainment throughout the weekend of June 18–21, 2009.

The citizens created a thriving business community soon after it was settled. Large cattle operations were run through the area and McLaughlin became a center for many activities, including trade with residents, both Indian and non-Indian. In 1889, the Standing Rock Reservation was formed, with McLaughlin at the center of the reservation on the South Dakota side. The town was named after MAJ James McLaughlin, a superintendent of Standing Rock, and the town was officially incorporated October 7, 1909. This community now has a grain elevator complex as well as a livestock auction market in town and continues as a traditional hub for its residents. The home of the Mighty Midgets has long been successful, both in the classroom and athletics.

As they reach this monumental anniversary, McLaughlin will have the opportunity to reflect on its diverse and enriched past as well as the opportunities for its future. This community has been noted for its shared history and I congratulate them on reaching their centennial.●

125TH ANNIVERSARY OF REVILLO, SOUTH DAKOTA

● Mr. JOHNSON. Mr. President, today I recognize the community of Revillo, SD, on reaching the 125th anniversary of its founding. Revillo is a warm community, filled with historical beauty and a strong sense of hospitality.

The town of Revillo was founded on the homestead of John Hillstrom in 1884 when the Minneapolis and St. Louis Railway entered the area. The Revillo flour mill was built in 1904, where farmers would bring their wheat crop to have it made into Monogram flour to meet their annual needs. In the years before World War I, Revillo was booming with businesses, including two implement dealers, a drug store, two banks, three elevators, and an Opera House.

Today, Revillo is maintaining its history with four churches in town, many members having a lineal connection to those who first established the churches. This thriving community is also looking forward with a modern school and lighted athletic field, the Revillo Farmers Co-op elevator, and a maintainer for the Grant County highway department.

The people of Revillo are celebrating their heritage and their accomplishments June 20–21, 2009. One hundred and twenty-five years after its founding, Revillo holds its history close while continually looking to the future, demonstrating what is great about South Dakota, and why I am proud to call this great State home.●

125TH ANNIVERSARY OF SENECA, SOUTH DAKOTA

● Mr. JOHNSON. Mr. President, today I pay tribute to the 125th anniversary of the founding of the community of Seneca, South Dakota. After 125 years, this agrarian community will have the chance to reflect on both its industrious history as well as the potential of its future.

Beginning with a sod shanty that served as a stopping post as well as the local post office, Seneca began to thrive after the Chicago and Northwestern Railroad pushed west and created the town in 1886. After drawing the name Seneca from a hat, the town immediately began to boom with local businesses being brought in from the surrounding towns. Seneca transitioned from a cattle range to a farming community, with progressive modern conveniences including a notable water system.

This strong town has bound together throughout the years to accomplish whatever came their way. From sending engraved gold rings with their soldiers to World War I in 1917, to building a community center for one thousand dollars in 1937, the citizens of Seneca support their town and its people. This spirit of unity has sustained Seneca through one hundred and twenty-five years of changes and will support them

as they move forward. I congratulate the people of Seneca on reaching this historic anniversary.●

COMMENDING 153RD INFANTRY OF THE ARKANSAS NATIONAL GUARD

● Mrs. LINCOLN. Mr. President, today I wish to recognize the outstanding humanitarian assistance recently provided by Company C, 153rd Infantry of the Arkansas National Guard.

In early April, Mena, AR, was hit by an F3 tornado which devastated this small town in western Arkansas. These severe storms killed 3, injured more than 100, and left thousands of residents without power. The tornado also damaged important emergency response centers in the town and county, including the hospital, the police and fire departments, and the courthouse, which houses the 911 emergency dispatch center.

However, under the leadership of CPT Rodney Lay, Company C of the 153rd Infantry, including team leaders 1LT Brian Lawrence Inman, 1SG Eric Schnell, SSG James Schnell, SSG Jacob Sullivan, SSG Neal Badger, and WO Jeffrey Shores, helped to immediately restore order to the devastated community. Company C provided downtown security during the aftermath of the tornado and went door to door to check on area citizens. In addition, they provided aid to victims of the storm that could not be transported to the city's hospital.

Our military simply could not function without the thousands of reservists and guardsmen on bases and armories in communities across this country. Since September 11, 2001, they have been called upon to serve in unprecedented numbers. We honor the tremendous service they provide in preserving our freedoms, but we must also not forget the critical role they play in responding on the homefront in communities like Mena that desperately need their help in restoring order and stability in their time of need.

I am honored to recognize the outstanding service of these citizen soldiers to the State of Arkansas and to the thousands of others who have helped provide assistance and support to communities in need.●

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mrs. Neiman, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

MESSAGE FROM THE HOUSE

At 3:44 p.m., a message from the House of Representatives, delivered by Ms. Niland, one of its reading clerks, announced that the House disagrees to the amendment of the Senate to the bill (H. R. 2346) making supplemental appropriations for the fiscal year ending September 30, 2009, and for other purposes, and agrees to the conference asked by the Senate on the disagreeing votes of the two Houses thereon, and appoints the following Members as managers of the conference on the part of the House: Mr. OBEY, Mr. MURTHA, Ms. DELAURO, Mrs. LOWEY, Mr. EDWARDS, Mr. LEWIS of California, Mr. YOUNG of Florida, and Ms. GRANGER.

MEASURES PLACED ON THE CALENDAR

The following bills were read the second time, and placed on the calendar:

S. 1232. A bill to amend the Federal Food, Drug, and Cosmetic Act with respect to the importation of prescription drugs, and for other purposes.

H.R. 2751. An act to accelerate motor fuel savings nationwide and provide incentives to registered owners of high polluting automobiles to replace such automobiles with new fuel efficient and less polluting automobiles.

MEASURES HELD AT THE DESK

The following concurrent resolution was ordered held at the desk, by unanimous consent:

S. Con. Res. 26. Concurrent resolution apologizing for the enslavement and racial segregation of African Americans.

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, and were referred as indicated:

EC–1912. A communication from the Congressional Review Coordinator, Animal and Plant Health Inspection Service, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled ''Karnal Bunt; Regulated Areas'' (Docket No. APHIS–2009–0036) received in the Office of the President of the Senate on June 3, 2009; to the Committee on Agriculture, Nutrition, and Forestry.

EC–1913. A communication from the Congressional Review Coordinator, Animal and Plant Health Inspection Service, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled ''Importation of Eggplant from Israel'' (Docket No. APHIS–2007–0153) received in the Office of the President of the Senate on June 3, 2009; to the Committee on Agriculture, Nutrition, and Forestry.

EC–1914. A communication from the Director, Regulatory Management Division, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Triflumizole; Pesticide Tolerances'' (FRL No. 8414–6) received in the Office of the President of the Senate on June 8, 2009; to the Committee on Agriculture, Nutrition, and Forestry.

EC–1915. A communication from the Director, Regulatory Management Division, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Aspergillus flavus AF36 on Pistachio; Extension of Temporary Exemption from the Requirement of a Tolerance'' (FRL No. 8416–7) received in the Office of the President of the Senate on June 8, 2009; to the Committee on Agriculture, Nutrition, and Forestry.

EC–1916. A communication from the Director, Regulatory Management Division, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Residues of Silver in Foods from Food Contact Surfaces Sanitizing Solutions; Exemption from the Requirement of Tolerance'' received in the Office of the President of the Senate on June 8, 2009; to the Committee on Agriculture, Nutrition, and Forestry.

EC–1917. A communication from the Chairman of the Joint Chiefs of Staff, Department of Defense, transmitting, pursuant to law, a report relative to Reachback Distributed Decision Support; to the Committee on Armed Services.

EC–1918. A communication from the Secretary of Energy, transmitting, pursuant to law, a report entitled ''Department of Energy Activities Relating to the Defense Nuclear Facilities Safety Board''; to the Committee on Energy and Natural Resources.

EC–1919. A communication from the Director, Regulatory Management Division, Environmental Protection Agency, transmitting, a Uniform Resource Locator (URL) for a document entitled ''The Ground Water Rule Implementation Guidance'' received in the Office of the President of the Senate on June 8, 2009; to the Committee on Environment and Public Works.

EC–1920. A communication from the Director, Regulatory Management Division, Environmental Protection Agency, transmitting, a Uniform Resource Locator (URL) for a document entitled ''The Ground Water Rule Triggered and Representative Source Water Monitoring Public Review Guidance'' received in the Office of the President of the Senate on June 8, 2009; to the Committee on Environment and Public Works.

EC–1921. A communication from the Director, Regulatory Management Division, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Approval and Promulgation of Air Quality Implementation Plans; Indiana'' (FRL No. 8900–5) received in the Office of the President of the Senate on June 8, 2009; to the Committee on Environment and Public Works.

EC–1922. A communication from the Director, Regulatory Management Division, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Revisions to the California State Implementation Plan; Monterey Bay Unified Air Pollution Control District and Placer County Air Pollution Control District'' (FRL No. 8900–8) received in the Office of the President of the Senate on June 8, 2009; to the Committee on Environment and Public Works.

EC–1923. A communication from the Director, Regulatory Management Division, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Revisions to the California State Implementation Plan; Antelope Valley Air Quality Management District and South Coast Air Quality Management District'' (FRL No. 8902–1) received in the Office of the President of the Senate on June 8, 2009; to the Committee on Environment and Public Works.

EC–1924. A communication from the Director, Regulatory Management Division, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Approval and Promulgation of Implementation Plans for Designated Facilities and Pollutants; Davidson, Knox, and Memphis-Shelby Counties, Tennessee'' (FRL No. 8912–3) received in the Office of the President of the

Senate on June 8, 2009; to the Committee on Environment and Public Works.

EC–1925. A communication from the Director, Regulatory Management Division, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Approval and Promulgation of Implementation Plans for Designated Facilities and Pollutants; State of Tennessee and Commonwealth of Kentucky'' (FRL No. 8912–4) received in the Office of the President of the Senate on June 8, 2009; to the Committee on Environment and Public Works.

EC–1926. A communication from the Director, Regulatory Management Division, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Approval and Promulgation of Implementation Plans for Designated Facilities and Pollutants; Jefferson County, Kentucky; Forsyth County, North Carolina; and Knox and Davidson Counties, Tennessee'' (FRL No. 8912–5) received in the Office of the President of the Senate on June 8, 2009; to the Committee on Environment and Public Works.

EC–1927. A communication from the Director, Regulatory Management Division, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Outer Continental Shelf Air Regulations Consistency Update for California'' (FRL No. 8912–7) received in the Office of the President of the Senate on June 8, 2009; to the Committee on Environment and Public Works.

EC–1928. A communication from the Director, Regulatory Management Division, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Approval and Promulgation of Implementation Plans for Designated Facilities and Pollutants; City of Memphis, Tennessee; Control of Emissions from Existing Hospital/Medical Infectious Waste Incinerators'' (FRL No. 8912–9) received in the Office of the President of the Senate on June 8, 2009; to the Committee on Environment and Public Works.

EC–1929. A communication from the Director, Regulatory Management Division, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Approval and Promulgation of Implementation Plans; Georgia: State Implementation Plan Revision'' (FRL No. 8915–7) received in the Office of the President of the Senate on June 8, 2009; to the Committee on Environment and Public Works.

EC–1930. A communication from the Director, Regulatory Management Division, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Approval and Promulgation of Implementation Plans; Hawaii'' (FRL No. 8915–8) received in the Office of the President of the Senate on June 8, 2009; to the Committee on Environment and Public Works.

EC–1931. A communication from the Federal Register Certifying Officer, Financial Management Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Debt Collection Authorities under the Debt Collection Improvement Act of 1996'' (RIN1510–AB19) received in the Office of the President of the Senate on June 8, 2009; to the Committee on Finance.

EC–1932. A communication from the Federal Register Certifying Officer, Financial Management Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Disbursing Official Offset'' (RIN1510–AB22) received in the Office of the President of the Senate on June 8, 2009; to the Committee on Finance.

EC–1933. A communication from the Assistant Secretary, Office of Legislative Affairs, Department of State, transmitting, pursuant to law, a report relative to the extension of waiver authority for Turkmenistan; to the Committee on Finance.

EC–1934. A communication from the Assistant Legal Adviser for Treaty Affairs, Department of State, transmitting, pursuant to the Case-Zablocki Act, 1 U.S.C. 112b, as amended, the report of the texts and background statements of international agreements, other than treaties (List 2009–0074—2009–0075); to the Committee on Foreign Relations.

EC–1935. A communication from the Secretary of the Treasury, transmitting, pursuant to law, a report on the national emergency with respect to the risk of nuclear proliferation created by the accumulation of weapons-usable fissile material in the territory of the Russian Federation; to the Committee on Banking, Housing, and Urban Affairs.

EC–1936. A communication from the General Counsel, Department of Housing and Urban Development, transmitting, pursuant to law, (2) reports relative to vacancy announcements within the Department; to the Committee on Banking, Housing, and Urban Affairs.

EC–1937. A communication from the Assistant Director for Policy, Office of Foreign Assets Control, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Appendix A to 31 CFR Chapter V'' received in the Office of the President of the Senate on June 8, 2009; to the Committee on Banking, Housing, and Urban Affairs.

EC–1938. A communication from the General Counsel and Senior Policy Advisor, Office of Management and Budget, Executive Office of the President, transmitting, pursuant to law, (4) reports relative to vacancy announcements within the Office of Management and Budget; to the Committee on Homeland Security and Governmental Affairs.

EC–1939. A communication from the Acting Senior Procurement Executive, Office of the Chief Acquisition Officer, General Services Administration, Department of Defense, and National Aeronautics and Space Administration, transmitting, pursuant to law, the report of a rule entitled ''Federal Acquisition Regulation; Federal Acquisition Circular 2005–29, Amendment-4'' (FAR Case 2007–013) received in the Office of the President of the Senate on June 8, 2009; to the Committee on Homeland Security and Governmental Affairs.

EC–1940. A communication from the Acting Chief Executive Officer, Millennium Challenge Corporation, transmitting, pursuant to law, the Semiannual Report of the Inspector General for the period from October 1, 2008, through March 31, 2009; to the Committee on Homeland Security and Governmental Affairs.

EC–1941. A communication from the Acting Chairman, Equal Employment Opportunity Commission, transmitting, pursuant to law, the Semiannual Report of the Inspector General for the period from October 1, 2008, through March 31, 2009; to the Committee on Homeland Security and Governmental Affairs.

EC–1942. A communication from the Director, Office of Personnel Management, transmitting, pursuant to law, the Semiannual Report of the Inspector General for the period from October 1, 2008, through March 31, 2009; to the Committee on Homeland Security and Governmental Affairs.

EC–1943. A communication from the Attorney General, Department of Justice, transmitting, pursuant to law, the Attorney General's Semiannual Management Report and the Semiannual Report of the Inspector General for the period from October 1, 2008, through March 31, 2009; to the Committee on Homeland Security and Governmental Affairs.

EC–1944. A communication from the Attorney Advisor, U.S. Coast Guard, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled ''Safety Zone; Sea World June Fireworks; Mission Bay, San Diego, California'' ((RIN1625–AA00)(Docket No. USG–2009–0267)) received in the Office of the President of the Senate on June 8, 2009; to the Committee on Commerce, Science, and Transportation.

EC–1945. A communication from the Attorney Advisor, U.S. Coast Guard, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled ''Safety Zone; Sea World Fireworks Season Kickoff; Mission Bay, San Diego, California'' ((RIN1625–AA00)(Docket No. USG–2009–0279)) received in the Office of the President of the Senate on June 8, 2009; to the Committee on Commerce, Science, and Transportation.

EC–1946. A communication from the Chief Executive Officer, United States Olympic Committee, transmitting, pursuant to law, a report relative to the Ted Stevens Olympic and Amateur Sports Act; to the Committee on Commerce, Science, and Transportation.

EC–1947. A communication from the Acting Administrator, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the Administration's Capital Investment Plan for Fiscal Years 2010 through 2014; to the Committee on Commerce, Science, and Transportation.

EC–1948. A communication from the Attorney Advisor, U.S. Coast Guard, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled ''Drawbridge Operation Regulation; Sturgeon Bay Ship Canal, Sturgeon Bay, WI'' ((RIN1625–AA09)(Docket No. USCG–2009–0385)) received in the Office of the President of the Senate on June 8, 2009; to the Committee on Commerce, Science, and Transportation.

EC–1949. A communication from the Attorney Advisor, U.S. Coast Guard, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled ''Marine Events Regattas; Annual Marine Events in the Eighth Coast Guard District'' ((RIN1625–AA08)(Docket No. USCG–2008–0386)) received in the Office of the President of the Senate on June 8, 2009; to the Committee on Commerce, Science, and Transportation.

EC–1950. A communication from the Chief of Staff, Media Bureau, Federal Communications Commission, transmitting, pursuant to law, the report of a rule entitled ''Amendment of Section 73.622(i), Final DTV Table of Allotments, Television Broadcast Stations; Buffalo, New York'' (MB Docket No. 09–46) received in the Office of the President of the Senate on June 8, 2009; to the Committee on Commerce, Science, and Transportation.

EC–1951. A communication from the Chief of Staff, Media Bureau, Federal Communications Commission, transmitting, pursuant to law, the report of a rule entitled ''Amendment of Section 73.622(i), Final DTV Table of Allotments, Television Broadcast Stations; South Bend, Indiana'' (MB Docket No. 08–102) received in the Office of the President of the Senate on June 8, 2009; to the Committee on Commerce, Science, and Transportation.

EC–1952. A communication from the Chief of Staff, Media Bureau, Federal Communications Commission, transmitting, pursuant to law, the report of a rule entitled ''Amendment of Section 73.622(i), Final DTV Table of Allotments, Television Broadcast Stations; Yuma, Arizona'' (MB Docket No. 08–163) received in the Office of the President of the Senate on June 8, 2009; to the Committee on Commerce, Science, and Transportation.

EC–1953. A communication from the Chief of Staff, Media Bureau, Federal Communications Commission, transmitting, pursuant to law, the report of a rule entitled ''Amendment of Section 73.622(i), Final DTV Table of

Allotments, Television Broadcast Stations; Fort Wayne, Indiana'' (MB Docket No. 08–208) received in the Office of the President of the Senate on June 8, 2009; to the Committee on Commerce, Science, and Transportation.

EC–1954. A communication from the Chief of Staff, Media Bureau, Federal Communications Commission, transmitting, pursuant to law, the report of a rule entitled ''Amendment of Section 73.622(i), Final DTV Table of Allotments, Television Broadcast Stations; Williston, North Dakota'' (MB Docket No. 08–140) received in the Office of the President of the Senate on June 8, 2009; to the Committee on Commerce, Science, and Transportation.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mrs. BOXER, from the Committee on Environment and Public Works, without amendment:

H.R. 813. A bill to designate the Federal building and United States courthouse located at 306 East Main Street in Elizabeth City, North Carolina, as the ''J. Herbert W. Small Federal Building and United States Courthouse''.

H.R. 837. A bill to designate the Federal building located at 799 United Nations Plaza in New York, New York, as the ''Ronald H. Brown United States Mission to the United Nations Building''.

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of nominations were submitted:

By Mr. SCHUMER for the Committee on Rules and Administration.

*John J. Sullivan, of Maryland, to be a Member of the Federal Election Commission for a term expiring April 30, 2013.

By Mr. LEAHY for the Committee on the Judiciary.

Gerard E. Lynch, of New York, to be United States Circuit Judge for the Second Circuit.

Mary L. Smith, of Illinois, to be an Assistant Attorney General.

By Mrs. FEINSTEIN for the Select Committee on Intelligence.

*Robert S. Litt, of Maryland, to be General Counsel of the Office of the Director of National Intelligence.

*Stephen Woolman Preston, of the District of Columbia, to be General Counsel of the Central Intelligence Agency.

*Nomination was reported with recommendation that it be confirmed subject to the nominee's commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.

(Nominations without an asterisk were reported with the recommendation that they be confirmed.)

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second times by unanimous consent, and referred as indicated:

By Mr. LIEBERMAN (for himself, Mr. ENSIGN, Mr. NELSON of Florida, Mr. COCHRAN, Mr. MENENDEZ, Mr. MARTINEZ, Mr. BURR, Mr. VITTER, and Mr. BUNNING):

S. 1234. A bill to modify the prohibition on recognition by United States courts of certain rights relating to certain marks, trade names, or commercial names; to the Committee on the Judiciary.

By Ms. LANDRIEU (for herself, Mr. COCHRAN, Mr. SPECTER, and Mr. BAYH):

S. 1235. A bill to amend the Public Health Act, the Employee Retirement Income Security Act of 1974, and the Internal Revenue Code of 1986 to require that group and individual health insurance coverage and group health plans provide coverage for treatment of a minor child's congenital or developmental deformity or disorder due to trauma, infection, tumor, or disease; to the Committee on Health, Education, Labor, and Pensions.

By Mrs. FEINSTEIN (for herself and Mrs. BOXER):

S. 1236. A bill to amend title XVIII of the Social Security Act to transition to the use of metropolitan statistical areas as fee schedule areas for the physician fee schedule in California under the Medicare program; to the Committee on Finance.

By Mrs. MURRAY (for herself, Mr. JOHNSON, and Mr. REED):

S. 1237. A bill to amend title 38, United States Code, to expand the grant program for homeless veterans with special needs to include male homeless veterans with minor dependents and to establish a grant program for reintegration of homeless women veterans and homeless veterans with children, and for other purposes; to the Committee on Veterans' Affairs.

By Mr. ISAKSON (for himself, Mr. BURR, Mr. CHAMBLISS, Mr. CORNYN, Mr. THUNE, and Mr. VITTER):

S. 1238. A bill to amend the Workforce Investment Act of 1998 to make non-union training programs eligible for Federal funding the Green Jobs program; to the Committee on Health, Education, Labor, and Pensions.

By Mr. BINGAMAN (for himself, Mr. THUNE, and Mrs. GILLIBRAND):

S. 1239. A bill to amend section 340B of the Public Health Service Act to revise and expand the drug discount program under that section to improve the provision of discounts on drug purchases for certain safety net providers; to the Committee on Health, Education, Labor, and Pensions.

By Mr. DEMINT:

S. 1240. A bill to provide for the reform of health care, the Social Security system, the tax code for individuals and business, and the budget process; to the Committee on Finance.

By Mr. INHOFE (for himself and Mr. TESTER):

S. 1241. A bill to amend Public Law 106-206 to direct the Secretary of the Interior and the Secretary of Agriculture to require annual permits and assess annual fees for commercial filming activities on Federal land for film crews of 5 persons or fewer; to the Committee on Energy and Natural Resources.

By Mr. THUNE (for himself, Mr. COBURN, Mr. INHOFE, Mr. VITTER, Mr. JOHANNS, Mr. CORNYN, Mr. KYL, Mr. MCCONNELL, Mr. BARRASSO, and Mr. ENSIGN):

S. 1242. A bill to prohibit the Federal Government from holding ownership interests, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. HATCH (for himself and Mrs. LINCOLN):

S. 1243. A bill to require repayments of obligations and proceeds from the sale of assets under the Troubled Asset Relief Program to be repaid directly into the Treasury for reduction of the public debt; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. MERKLEY:

S. 1244. A bill to amend the Civil Rights Act of 1964 to protect breastfeeding by new mothers, to provide for a performance standard for breast pumps, and to provide tax incentives to encourage breastfeeding; to the Committee on Finance.

By Mr. WHITEHOUSE (for himself and Ms. SNOWE):

S. 1245. A bill to amend the Internal Revenue Code of 1986 to provide a tax credit for property owners who remove lead-based paint hazards; to the Committee on Finance.

By Mr. SANDERS:

S. 1246. A bill to establish a home energy retrofit finance program; to the Committee on Energy and Natural Resources.

By Mr. MENENDEZ (for himself, Mrs. GILLIBRAND, and Mr. LEAHY):

S. 1247. A bill to amend the Immigration and Nationality Act to promote family unity, and for other purposes; to the Committee on the Judiciary.

By Mr. CASEY:

S. 1248. A bill to establish a program in the Department of Energy to encourage consumers to trade-in older vehicles for more fuel-efficient vehicles and motorcycles, and for other purposes; to the Committee on Finance.

By Ms. KLOBUCHAR (for herself, Ms. CANTWELL, and Mr. GREGG):

S. 1249. A bill to amend title XVIII of the Social Security Act to create a value indexing mechanism for the physician work component of the Medicare physician fee schedule; to the Committee on Finance.

By Mr. NELSON of Florida (for himself, Mr. CRAPO, Mr. BINGAMAN, Mr. BENNET, Mr. MARTINEZ, Mr. CARDIN, and Mr. BROWNBACK):

S. 1250. A bill to amend the Internal Revenue Code of 1986 to expand the definition of cellulosic biofuel to include algae-based biofuel for purposes of the cellulosic biofuel producer credit and the special allowance for cellulosic biofuel plant property; to the Committee on Finance.

By Mr. WARNER:

S. 1251. A bill to amend title XVIII of the Social Security Act to provide for advanced illness care management services for Medicare beneficiaries, and for other purposes; to the Committee on Finance.

By Mr. ROCKEFELLER (for himself, Mr. INOUYE, and Ms. CANTWELL):

S. 1252. A bill to promote ocean and human health and for other purposes; to the Committee on Commerce, Science, and Transportation.

By Mr. CORKER (for himself, Mr. NELSON of Florida, Mrs. SHAHEEN, Ms. SNOWE, Mr. ISAKSON, and Mr. WICKER):

S. 1253. A bill to address reimbursement of certain costs to automobile dealers; to the Committee on the Judiciary.

By Mr. SCHUMER (for himself and Mr. GRAHAM):

S. 1254. A bill to provide for identification of misaligned currency, require action to correct the misalignment, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. SCHUMER:

S. 1255. A bill to amend the Magnuson-Stevens Fishery Conservation and Management Act to extend the authorized time period for rebuilding of certain overfished fisheries, and for other purposes; to the Committee on Commerce, Science, and Transportation.

By Ms. CANTWELL (for herself and Mr. KOHL):

S. 1256. A bill to amend title XIX of the Social Security Act to establish financial incentives for States to expand the provision of long-term services and supports to Medicaid beneficiaries who do not reside in an institution, and for other purposes; to the Committee on Finance.

By Ms. CANTWELL (for herself and Ms. STABENOW):

S. 1257. A bill to amend the Social Security Act to build on the aging network to establish long-term services and supports through single-entry point systems, evidence based disease prevention and health promotion programs, and enhanced nursing home diversion programs; to the Committee on Finance.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. SHELBY (for himself, Mr. SESSIONS, Mr. ISAKSON, and Mr. CHAMBLISS):

S. Res. 183. A resolution celebrating the life and achievements of Millard Fuller, the founder of Habitat for Humanity; considered and agreed to.

By Mr. CARDIN (for himself, Mr. DURBIN, Mr. AKAKA, Mr. ALEXANDER, Mr. BARRASSO, Mr. BAUCUS, Mr. BAYH, Mr. BEGICH, Mr. BENNET, Mr. BENNETT, Mr. BINGAMAN, Mr. BOND, Mrs. BOXER, Mr. BROWN, Mr. BROWNBACK, Mr. BUNNING, Mr. BURR, Mr. BURRIS, Mr. BYRD, Ms. CANTWELL, Mr. CARPER, Mr. CASEY, Mr. CHAMBLISS, Mr. COBURN, Mr. COCHRAN, Ms. COLLINS, Mr. CONRAD, Mr. CORKER, Mr. CORNYN, Mr. CRAPO, Mr. DEMINT, Mr. DODD, Mr. DORGAN, Mr. ENSIGN, Mr. ENZI, Mr. FEINGOLD, Mrs. FEINSTEIN, Mrs. GILLIBRAND, Mr. GRAHAM, Mr. GRASSLEY, Mr. GREGG, Mrs. HAGAN, Mr. HARKIN, Mr. HATCH, Mrs. HUTCHISON, Mr. INHOFE, Mr. INOUYE, Mr. ISAKSON, Mr. JOHANNS, Mr. JOHNSON, Mr. KAUFMAN, Mr. KENNEDY, Mr. KERRY, Ms. KLOBUCHAR, Mr. KOHL, Mr. KYL, Ms. LANDRIEU, Mr. LAUTENBERG, Mr. LEAHY, Mr. LEVIN, Mr. LIEBERMAN, Mrs. LINCOLN, Mr. LUGAR, Mr. MARTINEZ, Mr. MCCAIN, Mrs. MCCASKILL, Mr. MCCONNELL, Mr. MENENDEZ, Mr. MERKLEY, Ms. MIKULSKI, Ms. MURKOWSKI, Mrs. MURRAY, Mr. NELSON of Florida, Mr. NELSON of Nebraska, Mr. PRYOR, Mr. REED, Mr. REID, Mr. RISCH, Mr. ROBERTS, Mr. ROCKEFELLER, Mr. SANDERS, Mr. SCHUMER, Mr. SESSIONS, Mrs. SHAHEEN, Mr. SHELBY, Ms. SNOWE, Mr. SPECTER, Ms. STABENOW, Mr. TESTER, Mr. THUNE, Mr. UDALL of Colorado, Mr. UDALL of New Mexico, Mr. VITTER, Mr. VOINOVICH, Mr. WARNER, Mr. WEBB, Mr. WHITEHOUSE, Mr. WICKER, and Mr. WYDEN):

S. Res. 184. A resolution offering deepest condolences to the family and friends of Officer Stephen T. Johns and calling on the leaders of all Nations to speak out against the manifestations of anti-Semitism, bigotry, and hatred; considered and agreed to.

By Mr. HARKIN (for himself, Mr. BROWNBACK, Mr. LEVIN, Mr. DURBIN, Mr. KENNEDY, Mr. LAUTENBERG, Ms. STABENOW, Mr. BOND, and Mr. COCHRAN):

S. Con. Res. 26. A concurrent resolution apologizing for the enslavement and racial segregation of African Americans; ordered held at the desk.

ADDITIONAL COSPONSORS

S. 144

At the request of Mr. KERRY, the name of the Senator from Iowa (Mr. HARKIN) was added as a cosponsor of S. 144, a bill to amend the Internal Revenue Code of 1986 to remove cell phones from listed property under section 280F.

S. 388

At the request of Ms. MIKULSKI, the name of the Senator from New Hampshire (Mrs. SHAHEEN) was added as a cosponsor of S. 388, a bill to extend the termination date for the exemption of returning workers from the numerical limitations for temporary workers.

S. 451

At the request of Ms. COLLINS, the name of the Senator from Utah (Mr. BENNETT) was added as a cosponsor of S. 451, a bill to require the Secretary of the Treasury to mint coins in commemoration of the centennial of the establishment of the Girl Scouts of the United States of America.

S. 455

At the request of Mr. ROBERTS, the name of the Senator from Utah (Mr. BENNETT) was added as a cosponsor of S. 455, a bill to require the Secretary of the Treasury to mint coins in recognition of 5 United States Army Five-Star Generals, George Marshall, Douglas MacArthur, Dwight Eisenhower, Henry ''Hap'' Arnold, and Omar Bradley, alumni of the United States Army Command and General Staff College, Fort Leavenworth, Kansas, to coincide with the celebration of the 132nd Anniversary of the founding of the United States Army Command and General Staff College.

S. 461

At the request of Mrs. LINCOLN, the names of the Senator from Florida (Mr. NELSON), the Senator from Kentucky (Mr. BUNNING), the Senator from Vermont (Mr. SANDERS) and the Senator from Maine (Ms. SNOWE) were added as cosponsors of S. 461, a bill to amend the Internal Revenue Code of 1986 to extend and modify the railroad track maintenance credit.

S. 565

At the request of Mr. DURBIN, the name of the Senator from Arkansas (Mrs. LINCOLN) was added as a cosponsor of S. 565, a bill to amend title XVIII of the Social Security Act to provide continued entitlement to coverage for immunosuppressive drugs furnished to beneficiaries under the Medicare Program that have received a kidney transplant and whose entitlement to coverage would otherwise expire, and for other purposes.

S. 604

At the request of Mr. SANDERS, the name of the Senator from South Carolina (Mr. DEMINT) was added as a cosponsor of S. 604, a bill to amend title 31, United States Code, to reform the manner in which the Board of Governors of the Federal Reserve System is audited by the Comptroller General of the United States and the manner in which such audits are reported, and for other purposes.

S. 636

At the request of Mr. THUNE, the name of the Senator from Georgia (Mr. ISAKSON) was added as a cosponsor of S. 636, a bill to amend the Clean Air Act to conform the definition of renewable biomass to the definition given the term in the Farm Security and Rural Investment Act of 2002.

S. 645

At the request of Mrs. LINCOLN, the name of the Senator from Michigan (Ms. STABENOW) was added as a cosponsor of S. 645, a bill to amend title 32, United States Code, to modify the Department of Defense share of expenses under the National Guard Youth Challenge Program.

S. 653

At the request of Mr. CARDIN, the name of the Senator from Oklahoma (Mr. COBURN) was added as a cosponsor of S. 653, a bill to require the Secretary of the Treasury to mint coins in commemoration of the bicentennial of the writing of the Star-Spangled Banner, and for other purposes.

S. 711

At the request of Mr. BAUCUS, the name of the Senator from Montana (Mr. TESTER) was added as a cosponsor of S. 711, a bill to require mental health screenings for members of the Armed Forces who are deployed in connection with a contingency operation, and for other purposes.

S. 718

At the request of Mr. HARKIN, the name of the Senator from New York (Mrs. GILLIBRAND) was added as a cosponsor of S. 718, a bill to amend the Legal Services Corporation Act to meet special needs of eligible clients, provide for technology grants, improve corporate practices of the Legal Services Corporation, and for other purposes.

S. 822

At the request of Mr. SANDERS, the names of the Senator from Maryland (Ms. MIKULSKI), the Senator from Vermont (Mr. LEAHY) and the Senator from Alaska (Mr. BEGICH) were added as cosponsors of S. 822, a bill to support the recruitment and retention of volunteer firefighters and emergency medical services personnel, and for other purposes.

S. 823

At the request of Ms. SNOWE, the name of the Senator from Tennessee (Mr. CORKER) was added as a cosponsor of S. 823, a bill to amend the Internal Revenue Code of 1986 to allow a 5-year carryback of operating losses, and for other purposes.

S. 987

At the request of Mr. DURBIN, the name of the Senator from Connecticut (Mr. LIEBERMAN) was added as a cosponsor of S. 987, a bill to protect girls in developing countries through the prevention of child marriage, and for other purposes.

S. 1023

At the request of Mr. DORGAN, the names of the Senator from Arkansas (Mrs. LINCOLN), the Senator from Mississippi (Mr. COCHRAN) and the Senator

from Delaware (Mr. KAUFMAN) were added as cosponsors of S. 1023, a bill to establish a non-profit corporation to communicate United States entry policies and otherwise promote leisure, business, and scholarly travel to the United States.

S. 1026

At the request of Mr. CORNYN, the names of the Senator from Indiana (Mr. LUGAR) and the Senator from Idaho (Mr. CRAPO) were added as cosponsors of S. 1026, a bill to amend the Uniformed and Overseas Citizens Absentee Voting Act to improve procedures for the collection and delivery of marked absentee ballots of absent overseas uniformed service voters, and for other purposes.

S. 1050

At the request of Mr. ROCKEFELLER, the name of the Senator from New Jersey (Mr. MENENDEZ) was added as a cosponsor of S. 1050, a bill to amend title XXVII of the Public Health Service Act to establish Federal standards for health insurance forms, quality, fair marketing, and honesty in out-of-network coverage in the group and individual health insurance markets, to improve transparency and accountability in those markets, and to establish a Federal Office of Health Insurance Oversight to monitor performance in those markets, and for other purposes.

S. 1067

At the request of Mr. FEINGOLD, the name of the Senator from Pennsylvania (Mr. CASEY) was added as a cosponsor of S. 1067, a bill to support stabilization and lasting peace in northern Uganda and areas affected by the Lord's Resistance Army through development of a regional strategy to support multilateral efforts to successfully protect civilians and eliminate the threat posed by the Lord's Resistance Army and to authorize funds for humanitarian relief and reconstruction, reconciliation, and transitional justice, and for other purposes.

S. 1106

At the request of Mrs. LINCOLN, the name of the Senator from Montana (Mr. TESTER) was added as a cosponsor of S. 1106, a bill to amend title 10, United States Code, to require the provision of medical and dental readiness services to certain members of the Selected Reserve and Individual Ready Reserve based on medical need, and for other purposes.

S. 1131

At the request of Mr. WYDEN, the name of the Senator from Massachusetts (Mr. KERRY) was added as a cosponsor of S. 1131, a bill to amend title XVIII of the Social Security Act to provide certain high cost Medicare beneficiaries suffering from multiple chronic conditions with access to coordinated, primary care medical services in lower cost treatment settings, such as their residences, under a plan of care developed by a team of qualified and experienced health care professionals.

S. 1153

At the request of Mr. SCHUMER, the name of the Senator from Oregon (Mr. MERKLEY) was added as a cosponsor of S. 1153, a bill to amend the Internal Revenue Code of 1986 to extend the exclusion from gross income for employer-provided health coverage for employees' spouses and dependent children to coverage provided to other eligible designated beneficiaries of employees.

S. 1157

At the request of Mr. CONRAD, the name of the Senator from New Mexico (Mr. BINGAMAN) was added as a cosponsor of S. 1157, a bill to amend title XVIII of the Social Security Act to protect and preserve access of Medicare beneficiaries in rural areas to health care providers under the Medicare program, and for other purposes.

S. 1171

At the request of Mr. PRYOR, the name of the Senator from Ohio (Mr. BROWN) was added as a cosponsor of S. 1171, a bill to amend title XVIII of the Social Security Act to restore State authority to waive the 35-mile rule for designating critical access hospitals under the Medicare Program.

S. 1184

At the request of Mr. VITTER, the name of the Senator from North Carolina (Mr. BURR) was added as a cosponsor of S. 1184, a bill to amend the National Labor Relations Act to permit employers to pay higher wages to their employees.

S. 1198

At the request of Mr. ALEXANDER, the name of the Senator from North Carolina (Mr. BURR) was added as a cosponsor of S. 1198, a bill to limit disbursement of additional funds under the Troubled Asset Relief Program to certain automobile manufacturers, to impose fiduciary duties on the Secretary of the Treasury with respect to shareholders of such automobile manufacturers, to require the issuance of shares of common stock to eligible taxpayers which represent the common stock holdings of the United States Government in such automobile manufacturers, and for other purposes.

S. 1203

At the request of Mr. BAUCUS, the name of the Senator from Maine (Ms. SNOWE) was added as a cosponsor of S. 1203, a bill to amend the Internal Revenue Code of 1986 to extend the research credit through 2010 and to increase and make permanent the alternative simplified research credit, and for other purposes.

S. 1223

At the request of Mr. JOHANNS, the names of the Senator from North Carolina (Mr. BURR), the Senator from Ohio (Mr. VOINOVICH) and the Senator from Kentucky (Mr. MCCONNELL) were added as cosponsors of S. 1223, a bill to require prior Congressional approval of emergency funding resulting in Government ownership of private entities.

S. 1225

At the request of Mr. SANDERS, the names of the Senator from Alaska (Mr. BEGICH) and the Senator from Florida (Mr. NELSON) were added as cosponsors of S. 1225, a bill to require the Commodity Futures Trading Commission to take certain actions to prevent the manipulation of energy markets, and for other purposes.

S. 1232

At the request of Mr. DORGAN, the name of the Senator from North Dakota (Mr. CONRAD) was added as a cosponsor of S. 1232, a bill to amend the Federal Food, Drug, and Cosmetic Act with respect to the importation of prescription drugs, and for other purposes.

S. CON. RES. 11

At the request of Ms. COLLINS, the names of the Senator from Colorado (Mr. UDALL), the Senator from Montana (Mr. BAUCUS), the Senator from Nevada (Mr. ENSIGN), the Senator from Iowa (Mr. GRASSLEY), the Senator from Missouri (Mrs. MCCASKILL), the Senator from Arkansas (Mr. PRYOR), the Senator from Idaho (Mr. CRAPO), the Senator from South Dakota (Mr. JOHNSON), the Senator from Kentucky (Mr. BUNNING), the Senator from Wisconsin (Mr. KOHL) and the Senator from New Mexico (Mr. UDALL) were added as cosponsors of S. Con. Res. 11, a concurrent resolution condemning all forms of anti-Semitism and reaffirming the support of Congress for the mandate of the Special Envoy to Monitor and Combat Anti-Semitism, and for other purposes.

S. CON. RES. 14

At the request of Mr. BARRASSO, the name of the Senator from Maine (Ms. SNOWE) was added as a cosponsor of S. Con. Res. 14, a concurrent resolution supporting the Local Radio Freedom Act.

S. CON. RES. 24

At the request of Mrs. LINCOLN, the names of the Senator from Indiana (Mr. BAYH), the Senator from California (Mrs. BOXER), the Senator from Illinois (Mr. BURRIS), the Senator from West Virginia (Mr. BYRD), the Senator from Michigan (Mr. LEVIN), the Senator from Florida (Mr. NELSON), the Senator from Rhode Island (Mr. WHITEHOUSE) and the Senator from New York (Mrs. GILLIBRAND) were added as cosponsors of S. Con. Res. 24, a concurrent resolution to direct the Architect of the Capitol to place a marker in Emancipation Hall in the Capitol Visitor Center which acknowledges the role that slave labor played in the construction of the United States Capitol, and for other purposes.

S. CON. RES. 25

At the request of Mr. MENENDEZ, the names of the Senator from Mississippi (Mr. WICKER) and the Senator from Vermont (Mr. SANDERS) were added as cosponsors of S. Con. Res. 25, a concurrent resolution recognizing the value and benefits that community health centers provide as health care homes for over 18,000,000 individuals, and the

importance of enabling health centers and other safety net providers to continue to offer accessible, affordable, and continuous care to their current patients and to every American who lacks access to preventive and primary care services.

S. RES. 159

At the request of Mr. BURRIS, the names of the Senator from Texas (Mrs. HUTCHISON), the Senator from Michigan (Mr. LEVIN), the Senator from Kansas (Mr. BROWNBACK) and the Senator from New York (Mrs. GILLIBRAND) were added as cosponsors of S. Res. 159, a resolution recognizing the historical significance of Juneteenth Independence Day and expressing the sense of the Senate that history should be regarded as a means for understanding the past and solving the challenges of the future.

S. RES. 170

At the request of Mr. CASEY, the name of the Senator from West Virginia (Mr. ROCKEFELLER) was added as a cosponsor of S. Res. 170, a resolution expressing the sense of the Senate that children should benefit, and in no case be worse off, as a result of reform of the Nation's health care system.

S. RES. 179

At the request of Mr. KAUFMAN, the name of the Senator from Maine (Ms. COLLINS) was added as a cosponsor of S. Res. 179, a resolution congratulating the American Society of Mechanical Engineers on its 125 years of codes and standards development.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mrs. FEINSTEIN (for herself and Mrs. BOXER):

S. 1236. A bill to amend title XVIII of the Social Security Act to transition to the use of metropolitan statistical areas as fee schedule areas for the physician fee schedule in California under the Medicare program; to the Committee on Finance.

Mrs. FEINSTEIN. Mr. President, I rise to introduce legislation to correct a longstanding flaw in the Medicare Geographic Practice Cost Index, GPCI, system that negatively impacts physicians in California and several other states.

This legislation will base California physician payments on Metropolitan Statistical Areas, MSAs. Hospital payments are developed this way, and it makes sense to pay our doctors in the same manner.

It holds harmless the counties, predominately rural ones, whose locality average would otherwise drop as other counties are reclassified.

Congressman SAM FARR, along with several California colleagues, is introducing companion legislation.

The Medicare Geographic Practice Cost Index measures the cost of providing a Medicare covered service in a geographic area. Medicare payments are supposed to reflect the varying costs of rent, malpractice insurance, and other expenses necessary to operate a medical process. Counties are assigned to ''payment localities'' that are supposed to accurately capture these costs.

Here is the problem. Some of these payment localities have not changed since 1997. Others have been in place since 1966. Many areas that were rural even 10 years ago have experienced significant population growth, as metropolitan areas and suburbs have spread. Many counties now find themselves in payment localities that do not accurately reflect their true practice costs.

These payment discrepancies have a real and serious impact on physicians and the Medicare beneficiaries they are unable to serve. My home State of California has been hit particularly hard.

San Diego County physicians are underpaid by 4 percent. A number of physicians have left the county and 60 percent of remaining San Diego physicians report that they cannot recruit new doctors to their practices.

Santa Cruz County receives an 8.6 percent underpayment, and as a result, no physicians are accepting new Medicare patients. Instead, they are moving to neighboring Santa Clara, which has similar practice cost expense, but is reimbursed at a much higher rate. This means that seniors often need to travel at least 20 miles to see a physician.

Sacramento County, a major metropolitan area, is underpaid by 2.7 percent. The county's population has grown by 9.6 percent, while the number of physicians has declined by 11 percent.

Sonoma County physicians are paid at least 6.2 percent less than their geographic practice costs. They have experienced at 10 percent decline in specialists and a 9 percent decline in primary care physicians.

Health care coverage is not the same as access to health care. Seniors' Medicare cards are of no value if physicians in their community cannot afford to provide them with health care.

Physicians deserve to be fairly compensated for the work they perform. California doctors simply want to be compensated at the correct rate for the practice expenses they face.

This is not too much to ask.

The underpayment problem grows more severe every year, and the longer we wait to address it, the more drastic the solution will need to be. This legislation provides a common sense solution, increasing payment for those facing the most drastic underpayments, while protecting other counties from cuts in the process.

This is an issue of equity. It costs more to provide health care in expensive areas, and physicians serving our seniors must be fairly compensated.

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

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

S. 1236

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''GPCI Justice Act of 2009''.

SEC. 2. FINDINGS.

Congress finds the following:

(1) From 1966 through 1991, the Medicare program paid physicians based on what they charged for services. The Omnibus Reconciliation Act of 1989 required the establishment of a national Medicare physician fee schedule, which was implemented in 1992, replacing the charge-based system.

(2) The Medicare physician fee schedule currently includes more than 7000 services together with their corresponding payment rates. In addition, each service on the fee schedule has three relative value units (RVUs) that correspond to the three physician payment components of physician work, practice expense, and malpractice expense.

(3)(A) Each geographically adjusted RVU measures the relative costliness of providing a particular service in a particular location referred to as a locality. Physician payment localities are primarily consolidations of the carrier-defined localities that were established in 1966.

(B) When physician payment localities were redesignated in 1997, the Administrator of the Centers for Medicare & Medicaid Services acknowledged that the new payment locality configuration had not been established on a consistent geographic basis. Some were based on zip codes or Metropolitan Statistical Areas (MSAs) while others were based on political boundaries, such as cities, counties, or States.

(C) The Medicare program has not revised the geographic boundaries of the physician payment localities since the 1997 revision.

(4) Medicare's geographic adjustment for a particular physician payment locality is determined using three GPCIs (Geographic Practice Cost Indices) that also correspond to the three Medicare physician payment components of physician work, practice expense, and malpractice expense.

(5) The major data source used in calculating the GPCIs is the decennial census which provides new data only once every 10 years.

(6) This system of geographic payment designation has resulted in more than half of the current physician payment localities having counties within them with a large payment difference of 5 percent or more. A disproportionate number of these underpaid counties are located in California, Georgia, Minnesota, Ohio, and Virginia.

(7) For purposes of payment under the Medicare program, hospitals are organized and reimbursed for geographic costs according to MSAs.

(8) Studies by the Medicare Payment Advisory Commission (MedPAC) in 2007, the Government Accountability Office (GAO) in 2007, the Urban Institute in 2008, and Acumen LLC in 2008 have all documented this physician GPCI payment discrepancy—specifically that more than half of the current physician payment localities had counties within them with a large payment difference (that is, a payment difference of 5 percent or more) between GAO's measure of physicians' costs and Medicare's geographic adjustment for an area. All these objective studies have recommended changes to the locality system to correct the payment discrepancies.

(9) A common recommendation among the GPCI payment discrepancy studies referred to in paragraph (8) is to eliminate the county-based locality and replace it with one determined by Metropolitan Statistical Area.

SEC. 3. REDESIGNATING THE GEOGRAPHICAL PRACTICE COST INDEX (GPCI) LOCALITIES IN CALIFORNIA.

(a) IN GENERAL.—Section 1848(e) of the Social Security Act (42 U.S.C.1395w–4(e)) is amended by adding at the end the following new paragraph:

''(6) TRANSITION TO USE OF MSAS AS FEE SCHEDULE AREAS IN CALIFORNIA.—

''(A) IN GENERAL.—

''(i) REVISION.—Subject to clause (ii) and notwithstanding the previous provisions of this subsection, for services furnished on or after January 1, 2010, the Secretary shall revise the fee schedule areas used for payment under this section applicable to the State of California using the Metropolitan Statistical Area (MSA) iterative Geographic Adjustment Factor methodology as follows:

''(I) The Secretary shall configure the physician fee schedule areas using the Core-Based Statistical Areas-Metropolitan Statistical Areas (each in this paragraph referred to as an 'MSA'), as defined by the Director of the Office of Management and Budget, as the basis for the fee schedule areas. The Secretary shall employ an iterative process to transition fee schedule areas. First, the Secretary shall list all MSAs within the State by Geographic Adjustment Factor described in paragraph (2) (in this paragraph referred to as a 'GAF') in descending order. In the first iteration, the Secretary shall compare the GAF of the highest cost MSA in the State to the weighted-average GAF of the group of remaining MSAs in the State. If the ratio of the GAF of the highest cost MSA to the weighted-average GAF of the rest of State is 1.05 or greater then the highest cost MSA becomes a separate fee schedule area.

''(II) In the next iteration, the Secretary shall compare the MSA of the second-highest GAF to the weighted-average GAF of the group of remaining MSAs. If the ratio of the second-highest MSA's GAF to the weighted-average of the remaining lower cost MSAs is 1.05 or greater, the second-highest MSA becomes a separate fee schedule area. The iterative process continues until the ratio of the GAF of the highest-cost remaining MSA to the weighted-average of the remaining lower-cost MSAs is less than 1.05, and the remaining group of lower cost MSAs form a single fee schedule area, If two MSAs have identical GAFs, they shall be combined in the iterative comparison.

''(ii) TRANSITION.—For services furnished on or after January 1, 2010, in the State of California, after calculating the work, practice expense, and malpractice geographic indices described in clauses (i), (ii), and (iii) of paragraph (1)(A) that would otherwise apply through application of this paragraph, the Secretary shall increase any such index to the county-based fee schedule area value on December 31, 2009, if such index would otherwise be less than the value on January 1, 2010.

''(B) SUBSEQUENT REVISIONS.—

''(i) PERIODIC REVIEW AND ADJUSTMENTS IN FEE SCHEDULE AREAS.—Subsequent to the process outlined in paragraph (1)(C), not less often than every three years, the Secretary shall review and update the California Rest-of-State fee schedule area using MSAs as defined by the Director of the Office of Management and Budget and the iterative methodology described in subparagraph (A)(i).

''(ii) LINK WITH GEOGRAPHIC INDEX DATA REVISION.—The revision described in clause (i) shall be made effective concurrently with the application of the periodic review of the adjustment factors required under paragraph (1)(C) for California for 2012 and subsequent periods. Upon request, the Secretary shall make available to the public any county-level or MSA derived data used to calculate the geographic practice cost index.

''(C) REFERENCES TO FEE SCHEDULE AREAS.—Effective for services furnished on or after January 1, 2010, for the State of California, any reference in this section to a fee schedule area shall be deemed a reference to an MSA in the State.''.

(b) CONFORMING AMENDMENT TO DEFINITION OF FEE SCHEDULE AREA.—Section 1848(j)(2) of the Social Security Act (42 U.S.C. 1395w(j)(2)) is amended by striking ''The term'' and inserting ''Except as provided in subsection (e)(6)(C), the term''.

By Mr. BINGAMAN (for himself, Mr. THUNE, and Mrs. GILLIBRAND):

S. 1239. A bill to amend section 340B of the Public Health Service Act to revise and expand the drug discount program under that section to improve the provision of discounts on drug purchases for certain safety net providers; to the Committee on Health, Education, Labor, and Pensions.

Mr. BINGAMAN. Mr. President, I rise today with my colleague from South Dakota, Sen. THUNE, to introduce the 340B Program Improvement and Integrity Act of 2009. This legislation is designed to address the growing burden faced by our Nation's health care safety net institutions in being able to provide adequate pharmaceutical care to the most vulnerable patient populations.

Communities across the country rely on public and non-profit hospitals to serve as the health care ''safety net'' for low-income, uninsured, and underinsured patients. With the ever-increasing cost of pharmaceuticals, these institutions are struggling more and more to provide basic pharmaceutical care to those least able to afford it.

Fortunately, many safety net hospitals are currently able to participate in the federal 340B Drug Discount Program, which enables them to purchase outpatient drugs for their patients at discounted prices. These hospitals, known as ''covered entities'' under the 340B statute, include high-Medicaid disproportionate share hospitals, DSH, large and small urban hospitals, and certain rural hospitals.

I am introducing legislation today, the 340B Program Improvement and Integrity Act of 2009, which would extend discounted drug prices currently mandated only for outpatient drugs to inpatient drugs purchased by covered entities under the 340B program. Although the Medicare Modernization Act (MMA) of 2003 permitted pharmaceutical manufacturers to offer 340B drug discounts to covered entities, this legislation did not include a mandate. Without a mandate we have seen very little willingness on the part of manufactures to offer 340B drug discounts for inpatient drugs. As the prices of pharmaceutical drugs continue to increase sharply, the need for these inpatient discounts grows more and more acute.

My legislation would also allow expanded participation in the program to a subset of rural hospitals that, for a variety of reasons, cannot currently access 340B discounts. These newly eligible rural hospitals include: critical access hospitals, sole community hospitals, and rural referral centers. In proposing this modest expansion to the program, we have struck an important balance between ensuring a close nexus with low-income and indigent care, ensuring that a significant portion of savings are passed on to the Medicaid program, and strengthening the integrity of the program.

Specifically, newly eligible rural hospitals would have to meet appropriate standards demonstrating their ''safety net'' status, as do all hospitals that currently participate in the program. For example, sole community hospitals and rural referral centers, all of which are paid under the prospective payment system, would be required under this legislation to serve a significant percentage of low-income and indigent patients, have public or non-profit status, and, if privately owned and operated, to have a contract with state or local government to provide a significant level of indigent care. All standards are designed to reinforce the obligation of these covered entities to continue serving low-income and uninsured patients.

This legislation would also generate savings for the Medicaid program by requiring participating hospitals to credit to their State Medicaid program a percentage of their savings on inpatient drugs. It would address the overall efficiency and integrity of the 340B program through improved enforcement and compliance measures with respect to manufacturers and covered entities. This is designed to improve program administration and to prevent and remedy instances of program abuse.

The 340B Program Improvement and Integrity Act of 2009 would help safety net providers stretch their limited resources through increased access to discounted pharmaceuticals, enhance 340B program integrity by making sure participants are complying with program rules, and improve the care provided to this Nation's most vulnerable populations.

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

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

S. 1239

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''340B Program Improvement and Integrity Act of 2009''.

SEC. 2. EXPANDED PARTICIPATION IN SECTION 340B PROGRAM.

(a) EXPANSION OF COVERED ENTITIES RECEIVING DISCOUNTED PRICES.—Section 340B(a)(4) of the Public Health Service Act (42 U.S.C. 256b(a)(4)) is amended by adding at the end the following:

''(M) A children's hospital excluded from the Medicare prospective payment system pursuant to section 1886(d)(1)(B)(iii) of the Social Security Act which would meet the

requirements of subparagraph (L), including the disproportionate share adjustment percentage requirement under clause (ii) of such subparagraph, if the hospital were a subsection (d) hospital as defined by section 1886(d)(1)(B) of the Social Security Act.

''(N) An entity that is a critical access hospital (as determined under section 1820(c)(2) of the Social Security Act), and that meets the requirements of subparagraph (L)(i).

''(O) An entity that is a rural referral center, as defined by section 1886(d)(5)(C)(i) of the Social Security Act, or a sole community hospital, as defined by section 1886(d)(5)(C)(iii) of such Act, and that both meets the requirements of subparagraph (L)(i) and has a disproportionate share adjustment percentage equal to or greater than 8 percent.''.

(b) EXTENSION OF DISCOUNTS TO INPATIENT DRUGS.—Section 340B of the Public Health Service Act (42 U.S.C. 256b) is amended—

(1) in subsection (a), by striking ''outpatient'' each place that such appears in paragraphs (2), (5), (7), and (9); and

(2) in subsection (b)—

(A) by striking ''In this section'' and inserting the following:

''(A) IN GENERAL.—In this section''; and

(B) by adding at the end the following:

''(B) COVERED DRUG.—In this section, the term 'covered drug'—

''(i) means a covered outpatient drug (as defined in section 1927(k)(2) of the Social Security Act); and

''(ii) includes, notwithstanding paragraph (3)(A) of such section 1927(k), a drug used in connection with an inpatient or outpatient service provided by a hospital described in subparagraph (L), (M), (N), or (O) of subsection (a)(4) that is enrolled to participate in the drug discount program under this section.

''(C) PURCHASING ARRANGEMENTS FOR INPATIENT DRUGS.—The Secretary shall ensure that a hospital described in subparagraph (L), (M), (N), or (O) of subsection (a)(4) that is enrolled to participate in the drug discount program under this section shall have multiple options for purchasing covered drugs for inpatients including by utilizing a group purchasing organization or other group purchasing arrangement, establishing and utilizing its own group purchasing program, purchasing directly from a manufacturer, and any other purchasing arrangements that the Secretary may deem appropriate to ensure access to drug discount pricing under this section for inpatient drugs taking into account the particular needs of small and rural hospitals.''.

(c) PROHIBITION ON GROUP PURCHASING ARRANGEMENTS.—Section 340B(a) of the Public Health Service Act (42 U.S.C. 256b(a)) is amended—

(1) in paragraph (4)(L)—

(A) in clause (i), by adding ''and'' at the end;

(B) in clause (ii), by striking ''; and'' and inserting a period; and

(C) by striking clause (iii); and

(2) in paragraph (5)—

(A) by redesignating subparagraphs (C) and (D) as subparagraphs (D) and (E); respectively; and

(B) by inserting after subparagraph (B), the following:

''(C) PROHIBITING THE USE OF GROUP PURCHASING ARRANGEMENTS.—

''(i) IN GENERAL.—A hospital described in subparagraphs (L), (M), (N), or (O) of paragraph (4) shall not obtain covered outpatient drugs through a group purchasing organization or other group purchasing arrangement, except as permitted or provided for pursuant to clauses (ii) or (iii).

''(ii) INPATIENT DRUGS.—Clause (i) shall not apply to drugs purchased for inpatient use.

''(iii) EXCEPTIONS.—The Secretary shall establish reasonable exceptions to clause (i)—

''(I) with respect to a covered outpatient drug that is unavailable to be purchased through the program under this section due to a drug shortage problem, manufacturer noncompliance, or any other circumstance beyond the hospital's control;

''(II) to facilitate generic substitution when a generic covered outpatient drug is available at a lower price; or

''(III) to reduce in other ways the administrative burdens of managing both inventories of drugs subject to this section and inventories of drugs that are not subject to this section, so long as the exceptions do not create a duplicate discount problem in violation of subparagraph (A) or a diversion problem in violation of subparagraph (B).''.

(d) MEDICAID CREDITS ON INPATIENT DRUGS.—Section 340B(a)(5) of the Public Health Service Act (42 U.S.C. 256b(a)(5)) is amended by adding at the end the following:

''(E) MEDICAID CREDITS.—Not later than 90 days after the date of filing of the hospital's most recently filed Medicare cost report, the hospital shall issue a credit as determined by the Secretary to the State Medicaid program for inpatient covered drugs provided to Medicaid recipients.''.

(e) INTEGRITY IMPROVEMENTS.—Subsection (c) of section 340B of the Public Health Service Act (42 U.S.C. 256b(c)) is amended to read as follows:

''(c) IMPROVEMENTS IN PROGRAM INTEGRITY.—

''(1) MANUFACTURER COMPLIANCE.—

''(A) IN GENERAL.—From amounts appropriated under paragraph (4), the Secretary shall provide for improvements in compliance by manufacturers with the requirements of this section in order to prevent overcharges and other violations of the discounted pricing requirements specified in this section.

''(B) IMPROVEMENTS.—The improvements described in subparagraph (A) shall include the following:

''(i) The development of a system to enable the Secretary to verify the accuracy of ceiling prices calculated by manufacturers under subsection (a)(1) and charged to covered entities, which shall include the following:

''(I) Developing and publishing through an appropriate policy or regulatory issuance, precisely defined standards and methodology for the calculation of ceiling prices under such subsection.

''(II) Comparing regularly the ceiling prices calculated by the Secretary with the quarterly pricing data that is reported by manufacturers to the Secretary.

''(III) Performing spot checks of sales transactions by covered entities.

''(IV) Inquiring into the cause of any pricing discrepancies that may be identified and either taking, or requiring manufacturers to take, such corrective action as is appropriate in response to such price discrepancies.

''(ii) The establishment of procedures for manufacturers to issue refunds to covered entities in the event that there is an overcharge by the manufacturers, including the following:

''(I) Providing the Secretary with an explanation of why and how the overcharge occurred, how the refunds will be calculated, and to whom the refunds will be issued.

''(II) Oversight by the Secretary to ensure that the refunds are issued accurately and within a reasonable period of time, both in routine instances of retroactive adjustment to relevant pricing data and exceptional circumstances such as erroneous or intentional overcharging for covered drugs.

''(iii) The provision of access through the Internet website of the Department of Health and Human Services to the applicable ceiling prices for covered drugs as calculated and verified by the Secretary in accordance with this section, in a manner (such as through the use of password protection) that limits such access to covered entities and adequately assures security and protection of privileged pricing data from unauthorized re-disclosure.

''(iv) The development of a mechanism by which—

''(I) rebates and other discounts provided by manufacturers to other purchasers subsequent to the sale of covered drugs to covered entities are reported to the Secretary; and

''(II) appropriate credits and refunds are issued to covered entities if such discounts or rebates have the effect of lowering the applicable ceiling price for the relevant quarter for the drugs involved.

''(v) Selective auditing of manufacturers and wholesalers to ensure the integrity of the drug discount program under this section.

''(vi) The imposition of sanctions in the form of civil monetary penalties, which—

''(I) shall be assessed according to standards established in regulations to be promulgated by the Secretary within 180 days of the date of enactment of the 340B Program Improvement and Integrity Act of 2009;

''(II) shall not exceed $5,000 for each instance of overcharging a covered entity that may have occurred; and

''(III) shall apply to any manufacturer with an agreement under this section that knowingly and intentionally charges a covered entity a price for purchase of a drug that exceeds the maximum applicable price under subsection (a)(1).

''(2) COVERED ENTITY COMPLIANCE.—

''(A) IN GENERAL.—From amounts appropriated under paragraph (4), the Secretary shall provide for improvements in compliance by covered entities with the requirements of this section in order to prevent diversion and violations of the duplicate discount provision and other requirements specified under subsection (a)(5).

''(B) IMPROVEMENTS.—The improvements described in subparagraph (A) shall include the following:

''(i) The development of procedures to enable and require covered entities to regularly update (at least annually) the information on the Internet website of the Department of Health and Human Services relating to this section.

''(ii) The development of a system for the Secretary to verify the accuracy of information regarding covered entities that is listed on the website described in clause (i).

''(iii) The development of more detailed guidance describing methodologies and options available to covered entities for billing covered drugs to State Medicaid agencies in a manner that avoids duplicate discounts pursuant to subsection (a)(5)(A).

''(iv) The establishment of a single, universal, and standardized identification system by which each covered entity site can be identified by manufacturers, distributors, covered entities, and the Secretary for purposes of facilitating the ordering, purchasing, and delivery of covered drugs under this section, including the processing of chargebacks for such drugs.

''(v) The imposition of sanctions, in appropriate cases as determined by the Secretary, additional to those to which covered entities are subject under subparagraph (a)(5)(E), through one or more of the following actions:

''(I) Where a covered entity knowingly and intentionally violates subparagraph (a)(5)(B), the covered entity shall be required to pay a monetary penalty to a manufacturer or manufacturers in the form of interest on sums for which the covered entity is found liable

under paragraph (a)(5)(E), such interest to be compounded monthly and equal to the current short term interest rate as determined by the Federal Reserve for the time period for which the covered entity is liable.

''(II) Where the Secretary determines a violation of subparagraph (a)(5)(B) was systematic and egregious as well as knowing and intentional, removing the covered entity from the drug discount program under this section and disqualifying the entity from reentry into such program for a reasonable period of time to be determined by the Secretary.

''(III) Referring matters to appropriate Federal authorities within the Food and Drug Administration, the Office of Inspector General of Department of Health and Human Services, or other Federal agencies for consideration of appropriate action under other Federal statutes, such as the Prescription Drug Marketing Act.

''(3) ADMINISTRATIVE DISPUTE RESOLUTION PROCESS.—

''(A) IN GENERAL.—Not later than 180 days after the date of enactment of the 340B Program Improvement and Integrity Act of 2009, the Secretary shall promulgate regulations to establish and implement an administrative process for the resolution of claims by covered entities that they have been overcharged for drugs purchased under this section, and claims by manufacturers, after the conduct of audits as authorized by subsection (a)(5)(D), of violations of subsections (a)(5)(A) or (a)(5)(B), including appropriate procedures for the provision of remedies and enforcement of determinations made pursuant to such process through mechanisms and sanctions described in paragraphs (1)(B) and (2)(B).

''(B) DEADLINE AND PROCEDURES.—Regulations promulgated by the Secretary under subparagraph (A) shall—

''(i) designate or establish a decision-making official or decision-making body within the Department of Health and Human Services to be responsible for reviewing and finally resolving claims by covered entities that they have been charged prices for covered drugs in excess of the ceiling price described in subsection (a)(1), and claims by manufacturers that violations of subsection (a)(5)(A) or (a)(5)(B) have occurred;

''(ii) establish such deadlines and procedures as may be necessary to ensure that claims shall be resolved fairly, efficiently, and expeditiously;

''(iii) establish procedures by which a covered entity may discover and obtain such information and documents from manufacturers and third parties as may be relevant to demonstrate the merits of a claim that charges for a manufacturer's product have exceeded the applicable ceiling price under this section, and may submit such documents and information to the administrative official or body responsible for adjudicating such claim;

''(iv) require that a manufacturer conduct an audit of a covered entity pursuant to subsection (a)(5)(D) as a prerequisite to initiating administrative dispute resolution proceedings against a covered entity;

''(v) permit the official or body designated under clause (i), at the request of a manufacturer or manufacturers, to consolidate claims brought by more than one manufacturer against the same covered entity where, in the judgment of such official or body, consolidation is appropriate and consistent with the goals of fairness and economy of resources; and

''(vi) include provisions and procedures to permit multiple covered entities to jointly assert claims of overcharges by the same manufacturer for the same drug or drugs in one administrative proceeding, and permit such claims to be asserted on behalf of covered entities by associations or organizations representing the interests of such covered entities and of which the covered entities are members.

''(C) FINALITY OF ADMINISTRATIVE RESOLUTION.—The administrative resolution of a claim or claims under the regulations promulgated under subparagraph (A) shall be a final agency decision and shall be binding upon the parties involved, unless invalidated by an order of a court of competent jurisdiction.

''(4) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this subsection, such sums as may be necessary for fiscal year 2010, and each succeeding fiscal year.''.

(f) CONFORMING AMENDMENTS.—

(1) SOCIAL SECURITY ACT.—Section 1927 of the Social Security Act (42 U.S.C. 1396r–8), is amended—

(A) in subsection (a)(5)—

(i) in subparagraph (A), by striking ''covered outpatient drugs'' and inserting ''covered drugs (as defined in section 340B(b)(2) of the Public Health Service Act)'';

(ii) by striking subparagraph (D); and

(iii) by redesignating subparagraph (E) as subparagraph (D);

(B) in subsection (c)(1)(C)(i), by redesignating subclauses (II) through (IV) as subclauses (III) through (V), respectively and by inserting after subclause (I) the following new subclause:

''(II) any prices charged for a covered drug (as defined in section 340B(b)(2) of the Public Health Service Act);''; and

(C) in subsection (k)(1)—

(i) in subparagraph (A), by striking ''subparagraph (B)'' and inserting ''subparagraphs (B) and (D)''; and

(ii) by adding at the end the following new subparagraph:

''(D) CALCULATION FOR COVERED DRUGS.—With respect to a covered drug (as defined in section 340B(b)(2) of the Public Health Service Act), the average manufacturer price shall be determined in accordance with subparagraph (A) except that, in the event a covered drug is not distributed to the retail pharmacy class of trade, it shall mean the average price paid to the manufacturer for the drug in the United States by wholesalers for drugs distributed to the acute care class of trade, after deducting customary prompt pay discounts. The Secretary shall establish a mechanism for collecting the necessary data for the acute care class of trade from manufacturers.''.

(2) PUBLIC HEALTH SERVICE ACT.—Section 340B(a) of such Act (42 U.S.C. 256b(a)) is amended—

(A) in subsection (a)(1), by adding at the end the following: ''Each such agreement shall require that the manufacturer furnish the Secretary with reports, on a quarterly basis, of the price for each covered drug subject to the agreement that, according to the manufacturer, represents the maximum price that covered entities may permissibly be required to pay for the drug (referred to in this section as the 'ceiling price'), and shall require that the manufacturer offer each covered entity covered drugs for purchase at or below the applicable ceiling price if such drug is made available to any other purchaser at any price.''; and

(B) in the first sentence of subsection (a)(5)(E), as so redesignated by subsection (c)(2), by inserting ''after an audit as described in subparagraph (D), and'' after ''finds,''.

SEC. 3. EFFECTIVE DATES.

(a) IN GENERAL.—The amendments made by this Act shall take effect on January 1, 2010, and shall apply to drugs purchased on or after January 1, 2010.

(b) EFFECTIVENESS.—The amendments made by this Act shall be effective, and shall be taken into account in determining whether a manufacturer is deemed to meet the requirements of section 340B(a) of the Public Health Service Act (42 U.S.C. 256b(a)) and of section 1927(a)(5) of the Social Security Act (42 U.S.C. 1396r-8(a)(5)), notwithstanding any other provision of law.

By Mr. INHOFE (for himself and Mr. TESTER):

S. 1241. A bill to amend Public Law 106–206 to direct the Secretary of the Interior and the Secretary of Agriculture to require annual permits and assess annual fees for commercial filming activities on Federal land for film crews of 5 persons or fewer; to the Committee on Energy and Natural Resources.

Mr. INHOFE. Mr. President, I am introducing legislation today with Senator TESTER to lessen the burdens for small commercial filming on public lands. Specifically, this legislation provides special permitting to small film crews, defined in the bill as 5 persons or fewer, to simply pay a reasonable annual fee to be able to film on public lands.

Our Nation's public lands are an incredible natural resource, and the professional outdoor media industry is a valuable way to bring awareness to our Nation's resources and bring about awareness of the value of conservation of our Nation's land and resources through documentaries, sporting programs, and other productions. Small filming crews can be negatively affected by the current permitting and fee schedule because the business of wildlife filming is done on a speculative basis and often relies on unpredictable factors requiring much patience and time. Last Congress, Chairman RAHALL held a Natural Resources Committee hearing on the fees for filming and photography on public lands. At that hearing, Steve Scott, an independent television producer from Norman, OK, and Chairman of the Professional Outdoor Media Association, probably best described the work of small outdoor filming operations. He testified, ''By its very nature, wildlife photography is extremely time consuming, often done in the harshest conditions. . . . While large film and television production crews need relatively little time on public lands to complete their project, our nation's professional outdoor media may spend weeks or months in the field in order to capture a few magic seconds of unstaged Nature in its pristine state. And when outdoor media members spend time in the field, under the current fee structure, we also spend money, and lots of it.'' The small professional outdoor filming industry has enough natural barriers; The Federal Government should not impose itself as another through daily fees adding to the expense.

Last Congress, my colleague from Oklahoma, Congressman DAN BOREN, and DON YOUNG, introduced H.R. 5502 to

accomplish the same aim of the legislation Senator TESTER and I are introducing today. That legislation was supported by nearly 30 outdoors and sportsmen's organizations.

Those organizations supporting last Congress' legislation include the American Fisheries Society, the American Sportfishing Association, the Archery Trade Association, Bass Pro Shops, the Berkley Conservation Institute, Boone and Crockett Club, Bowhunting Preservation Alliance, Campfire Club of America, Catch-A-Dream Foundation, the Congressional Sportsmen's Foundation, Conservation Force, Dallas Safari Club, Mule Deer Foundation, the National Assembly of Sportsmen's Caucuses, the National Rifle Association, the National Shooting Sports Foundation, the National Wild Turkey Federation, the North American Bear Foundation, the North American Grouse Partnership, Pheasants Forever, Pure Fishing, Quality Deer Management Association, Quail Forever, the Ruffed Grouse Society, Safari Club International, the Texas Wildlife Association, the Theodore Roosevelt Conservation Partnership, the U.S. Sportsmen's Alliance, the Wild Sheep Foundation, and Wildlife Forever.

This Congress, Congressmen BOREN, RYAN, COURTNEY, MILLER, PUTNAM, and ROSS introduced H.R. 2031 on April 22, 2009, which is identical legislation to the legislation Senator TESTER and I are introducing today. I am sure it will enjoy the same support from our outdoor and sportsmen's organizations, and I look forward to its consideration in the Senate.

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

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

S. 1241

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

SECTION 1. PURPOSE.

The purpose of this Act is to provide commercial film crews of 5 persons or fewer access to film in areas designated for public use during public hours on Federal lands and waterways.

SEC. 2. ANNUAL PERMIT AND FEE FOR FILM CREWS OF 5 PERSONS OR FEWER.

(a) IN GENERAL.—Section (1)(a) of Public Law 106–206 (16 U.S.C. 4601–6d) is amended by—

(1) redesignating paragraphs (1), (2), and (3) as subparagraphs (A), (B), and (C), respectively;

(2) striking ''The Secretary of the Interior'' and inserting ''(1) IN GENERAL.—Except as provided by paragraph (3), the Secretary of the Interior'';

(3) inserting ''(2) OTHER CONSIDERATIONS.—'' before ''The Secretary may include other factors''; and

(4) adding at the end the following new paragraph:

''(3) SPECIAL RULES FOR FILM CREWS OF 5 PERSONS OR FEWER.—

''(A) For any film crew of 5 persons or fewer, the Secretary shall require a permit and assess an annual fee of $200 for commercial filming activities or similar projects on Federal lands and waterways administered by the Secretary. The permit shall be valid for commercial filming activities or similar projects that occur in areas designated for public use during public hours on all Federal lands and waterways administered by the Secretary for a 12-month period beginning on the date of issuance of the permit.

''(B) For persons holding a permit described in this paragraph, the Secretary shall not assess, during the effective period of the permit, any additional fee for commercial filming activities and similar projects that occur in areas designated for public use during public hours on Federal lands and waterways administered by the Secretary.

''(C) In this paragraph, the term 'film crew' includes all persons present on Federal land under the Secretary's jurisdiction who are associated with the production of a certain film.

''(D) The Secretary shall not prohibit, as a mechanized apparatus or under any other purposes, use of cameras or related equipment used for the purpose of commercial filming activities or similar projects in accordance with this paragraph on Federal lands and waterways administered by the Secretary.''.

(b) RECOVERY OF COSTS.—Section (1)(b) of Public Law 106–206 (16 U.S.C. 4601–6d) is amended by—

(1) striking ''collect any costs'' and inserting ''recover any costs''; and

(2) striking ''similar project'' and inserting ''similar projects''.

By Mr. THUNE (for himself, Mr. COBURN, Mr. INHOFE, Mr. VITTER, Mr. JOHANNS, Mr. CORNYN, Mr. KYL, Mr. MCCONNELL, Mr. BARRASSO, and Mr. ENSIGN):

S. 1242. A bill to prohibit the Federal Government from holding ownership interests, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

Mr. THUNE. Mr. President, over the past 15 months, the Federal Government has taken unprecedented actions to stabilize the U.S. economy. Unfortunately, these actions include the Federal Government acquiring direct ownership stakes in private companies, which exposes the American taxpayer to significant liabilities and creates a dangerous conflict of interest between the Federal Government and the private sector.

Thanks to the fact that the government has intervened in all these private companies, we now have about 500 banks, we have auto manufacturers, financial institutions, and insurance companies that the government now has an ownership interest in. President Obama has become a de facto CEO managing large segments of our economy, and Congress is now acting as a 535–Member board of directors.

I think it is fair to say when you combine business with politics, it inevitably leads to harmful conflicts of interest—which we are already beginning to see—because political decisions get substituted for business decisions.

As everyone in this Chamber knows all too well, government control of private business hampers investments. It hampers innovation, job creation. It diminishes the entrepreneurial spirit on which our economy is based.

Having the Federal Government call the shots for private industry is plain bad for business. It is bad for the economy, and it is bad for the American taxpayer.

So today I am introducing a piece of legislation, S. 1242, which gives the Federal Government an exit plan, a way of exiting the scene from the ownership that the Federal Government now has in all these various private companies in our economy. It essentially has four basic provisions.

The first provision is that upon enactment of the legislation, the Treasury Department may not purchase any additional ownership stake of private entities, such as warrants, preferred stock, or common stock purchased through the TARP program.

The second provision is this: The legislation would require the Treasury to sell any ownership stake of a private entity by July 1, 2010. Any revenue that comes in from the sale of those TARP assets would have to be used for debt reduction.

The third provision of the bill is that if the Treasury Secretary determines the assets are undervalued and there is a reasonable expectation that the assets will increase to their original purchase value, the Secretary may hold the assets for up to 1 additional year.

Finally, the fourth provision of the bill is that beyond July 1 of 2011, the Treasury Secretary may not hold any direct ownership of private companies unless Congress grants additional authority.

Essentially, what we are doing is saying that all this ownership interest the Federal Government now has acquired in all these private companies would have to be wound down, if you will, divested, by that July 1 deadline in the year 2010. If the Treasury Department determines that, in fact, doing so would impair the ability of the Treasury to recover the full value of those assets or if those assets are expected to appreciate, there is an additional year, up to a year of flexibility—essentially a waiver—from the July 1, 2010, deadline that would extend it to July 1, 2011. So it buys an additional year. But it does put a time certain out there, a deadline, if you will, by which the Federal Government has to dispose of and divest itself of all these ownership interests it has in our private economy.

The other issue I think is important is it prevents the Federal Government from acquiring an ownership stake going into the future. As I said before, any funds that are returned to the Treasury as a result of these assets being sold would have to be used for debt reduction. They cannot be recycled; they cannot be reused; they cannot go into some fund that is going to be used for additional acquisition of private sector assets.

I think the reason why this is important is if you look at what Secretary Geithner has said, he has indicated before that their intention is that when

some of these funds come back into the Treasury—and we saw this recently with banks that agreed to pay this money back—they are going to reuse it. I don't believe that is what was intended in the first place. I don't think this was at any point designed to become a slush fund that could be used for the acquisition of other assets; it was designed to be used—at least initially, the way it was presented—for the purchase of toxic assets, illiquid assets on the balance sheets of many of our financial institutions. It quickly evolved into something else. It became a fund that was used to acquire an equity stake, equity interest in many of these companies. So I don't think that was the purpose for which it was intended.

I think a lot of people who made votes assumed at the time it wouldn't be used to buy toxic assets. It ended up being used to buy an ownership interest in these companies, and I think, again, the American people are uncomfortable with the notion of the Federal Government owning a big share of our private economy. I also do not think it was intended in the first place to be used to buy the assets of other types of industries—essentially, to do industrial policy, as some people have referred to it—to acquire assets of auto manufacturers, for example; it was designed specifically for the financial services industry.

There is no real exit strategy out there. In fact, Secretary Geithner was asked in front of the Senate Banking Committee a couple weeks ago about whether there was a plan to dispose of some of these assets, and he said there isn't a plan; it is not necessary at this point.

Well, I think we need to have an exit strategy. Everybody talks about an exit strategy. The President needs an exit strategy in Iraq. It seems to me we need to have an exit strategy that would allow the American taxpayer to recover funds they have been investing through the TARP program in all these various companies that would get the Federal Government out of the way of these companies and out of the day-to-day decisionmaking and management of these companies. My bill would prohibit that as well, in addition to some of these other provisions I mentioned.

It would prohibit or bar the Federal Government from dictating to these companies with respect to hiring decisions when it comes to senior executives, when it comes to boards of directors, when it comes to where to relocate or locate or close certain plants. Those are decisions that should not be made by politicians in Washington. They should not be made by bureaucrats in Washington, DC. They ought to be business decisions and not political decisions.

The bill, as I said, is very straightforward.

There are a number of folks who have commented on, made observations about what is happening in the economy right now, and this sort of proliferation of companies in which the Federal Government now has an ownership share. I wish to read for my colleagues some of what has been said by folks who I think know a lot about the private economy and whether it is a good idea to have the Federal Government owning and controlling as much as they do currently of some of these companies. If you look at the various percentages, they are significant. Of course, we know most recently General Motors, a $50 billion investment there gets the taxpayer ownership interest to about 60 percent; Chrysler, about 12 percent; Citibank, about 36 percent, and you can go down the list of all these various private companies in which the government now has an ownership interest.

There was an editorial in the Kansas City Star that said that:

> What's worrisome is that while the administration said it isn't interested in running car companies, it has said little on an exit strategy.

It went on to say:

> Any government bailout of private industry should be temporary and as brief as possible.

Anne Mulcahy, chief executive of Xerox—I am sure I just butchered the name—said recently:

> I think all of us understand the need for the government to intervene and to take the actions they did, but I also think there's a need for an exit plan.

Jim Owens, who is the chief executive at Caterpillar, said:

> I think that's fundamentally unhealthy. The Federal Government needs to be in and out.

Google's Eric Schmidt noted that the U.S. stimulus package was designed to cover a 2-year period. He said:

> It's very important that government get out of business and let business do its thing. The most important thing to remember, I think, is that jobs, wealth, are created in the private sector. That's about capitalism.

In a Wall Street Journal opinion piece, Paul Ingrassia argues:

> . . . must have a clear exit timetable for the government to sell its shares for both Chrysler and GM and get the companies back in the hands of private investors. Mr. Obama has an exit strategy for Iraq; he needs one for Detroit, too.

So there are a lot of people who have a lot of experience when it comes to running companies who have concluded that the government does, in fact, need an exit strategy. I think, as I said before, it is fair to say that one doesn't exist today, and when Secretary Geithner testified in front of the Senate Banking Committee a couple weeks back he admitted as much, that there isn't an exit plan.

What my bill does is it gives us an exit plan. It gives us an exit plan with a deadline, with a little flexibility in the deadline, some ability to provide a waiver for the Treasury Department that would allow for an additional year, if necessary; if those assets the government holds are considered to be assets that could appreciate over time and, therefore, yield a higher return for the Federal Government but, at some point, we have to say enough is enough. We have to put an end to this practice we have gotten involved with, this precedent we have now created of having the Federal Government own more and more of our private economy.

I would argue, again, that is not good for business, it is not good for the economy, it is not good for job creation; it stifles the entrepreneurial spirit which has built this country and made it great, and I don't think it does anything to create jobs and get our economy back on track.

I hope we will have an opportunity to debate this. It seems to me at least that in the days ahead there will be various bills that will be debated on the floor of the Senate that would give us a chance to debate this issue. I intend to offer this, if I can't get some interest in moving it as a freestanding bill, as an amendment to other vehicles that might be moving through the Senate in the days and the weeks and the months ahead. But I do think it is important. I think it is important to the American taxpayer. I think it is important to the American economy. I think it is important to American business that the Federal Government have an exit strategy. We have a plan whereby we can move and get away from this practice we have undertaken now with great regularity and great frequency of acquiring even more and more interests in American business.

By Mr. HATCH (for himself and Mrs. LINCOLN):

S. 1243. A bill to require repayments of obligations and proceeds from the sale of assets under the Troubled Asset Relief Program to be repaid directly into the Treasury for reduction of the public debt; to the Committee on Banking, Housing, and Urban Affairs.

Mr. HATCH. Mr. President, I rise today to introduce the Stop TARP Asset Recycling Act, or the STAR Act, a bill that would require any funds returned to the Treasury Department that were originally allocated under the Troubled Asset Relief Program, TARP, to be placed in the general fund rather than being put back into TARP. I am proud to say that this is a bipartisan bill, cosponsored by my friend from Arkansas, Senator LINCOLN.

It is apparent that TARP has become a slush fund for the Obama administration to acquire banks, insurance companies and auto manufacturers. We need to ensure that the original purpose of TARP is maintained and Treasury is prevented from unilaterally and arbitrarily nationalizing our nation's private sector.

The Emergency Economic Stabilization Act, which was signed into law last October, created TARP. This act authorized TARP to purchase up to $700 billion in troubled assets from financial institutions ''to restore liquidity and stability to the financial system.'' However, since its inception,

TARP has taken on a different role in our free enterprise system. It seems to have become the go-to solution for all of our problems. It has been used to bail out banks, insurance companies and automobile manufacturers. What is next, Mr. President?

Some of our healthier banks are now returning this money because, I believe, of the unreasonable regulations that have been and could be placed on firms with TARP funds. While it is clear that proceeds from TARP sales must be placed in the general fund to pay down our increasing debt, it is unclear under the law whether or not the original investment from TARP must be placed in the general fund or can be recycled back into TARP. The latter option would result in an ever-revolving slush fund for TARP and could provide this administration with the means to pick and choose which company it would next like to nationalize.

For example, the Treasury Department recently used $30 billion to purchase up to 60 percent of General Motors' shares. If, in the future, Treasury sells these shares at a gain, let us say $32 billion, the $2 billion profit must be put back into the general fund, but it is unclear whether the original $30 billion investment recovered from the sale can be put back into TARP.

I do not believe any of my colleagues intended TARP to get this out of control. It is time that we reestablish the purpose of TARP by requiring Treasury to put the original investment back into the general fund. Congress must no longer stand by and watch Treasury amass an everlasting fund it can use to bail out any industry it deems ''too big to fail'' without congressional approval.

Ten large banks have recently received Treasury approval to repay $68 billion received under TARP. I believe now is the time to start restricting Treasury's access to these funds. My bill would force Treasury to put this money back into the general fund once it is used. It would not prevent Treasury from using up to $700 billion already authorized under TARP, but it would force Treasury to make sure that the taxpayers' investment is spent wisely.

The American taxpayer has been told to foot the bill for rescuing the financial sector, but now they are being forced to bail out any company at the discretion of the Department of Treasury. Many Utahns are saying it is time to be fiscally conservative, and I agree. So do millions elsewhere across the Nation.

I hope my colleagues would agree as well and support this legislation; otherwise, we have not only written a blank check to Treasury, but we have delegated an enormous amount of power over our free enterprise system. This money belongs to the people, not the Obama administration. I think it is time Congress acts to ensure that TARP is being used for its intended purpose.

By Mr. MERKLEY:

S. 1244. A bill to amend the Civil Rights Act of 1964 to protect breastfeeding by new mothers, to provide for a performance standard for breast pumps, and to provide tax incentives to encourage breastfeeding; to the Committee on Finance.

Mr. MERKLEY. Mr. President, I rise today to discuss a bill to help promote and protect breastfeeding in the workplace.

The science is undisputable—babies who are breastfed the first 6 months of life have a greatly reduced risk for acute and chronic disease—yet only ten percent of all infants receive this nourishment that they need to remain healthy. One of the primary reasons for this is that working moms face real and serious challenges to expressing milk when they return to work.

Well, today is a day to change that. In Oregon, we have enacted strong legislation to make sure that working moms are afforded the time and space they need at work to express milk. In fact, my first event as a candidate for U.S. Senate was at a luncheon celebrating the success of Oregon's breastfeeding promotion law. I said that day that I would work to expand Oregon's efforts nationwide, and today we take the important first step towards enacting legislation to protect working moms across the country.

First, I want to thank Representative CAROLYN MALONEY of New York for her strong leadership on this issue. For years, she has been a champion for working moms everywhere, and I applaud her determination to make it easier for women.

We know that 72 percent of moms work full time, and that number is growing. In fact, according to the Center on Work and Family at Boston College, the fastest-growing segment of the U.S. workforce is women with children under three years of age.

Women who decide to breastfeed often face unique challenges and at times, social stigmas, for trying to give their baby the healthiest start in life.

In an environment where mothers return to work as early as 3 to 6 weeks post-partum, often driven by economic necessity, it is simply an act of human decency to protect their right to continue breastfeeding after they return to work to help meet their basic needs with regard to the care and nourishment of their children. But for most, it is an unachievable goal.

If we are to have any hope of increasing the number of babies being breastfed, we need to implement a strategy that addresses workplace conditions.

The Breastfeeding Promotion Act that Representative MALONEY and I are introducing today is a measured step in this direction.

It protects breastfeeding women from discrimination in the workplace, provides tax credits to employers who make accommodations for breastfeeding moms, and most importantly, it affords working moms with the time, space, and privacy they need to express milk.

Many of these changes have been successfully implemented in my home State of Oregon where we have seen a tremendous difference in the experiences of mothers, as well as positive impacts for employers, as a result of this type of legislation.

Tonya Hirte, a senior customer service representative in Portland, said that before the law took effect, she had to express breast milk in a bathroom on a separate floor from her worksite, but that after implementation of the law, her company converted a storage closet into a private, simply-furnished room, bringing dignity to her experience as a mother, and helping her feel valued as an employee.

A Lane County employee said that having a breastfeeding-friendly workplace allowed her to focus better on her work, knowing her daughter's needs were being met emotionally and physically because the work breaks to express breast milk facilitated their breastfeeding relationship when they were together.

But it's not just the employees who are seeing positive changes as a result of the Oregon law. Jim Rochs, General Manager of Carinos Italian Restaurant in Bend, Oregon, says that they create a better team overall if they take care of one another. The time and space his employee needed to express breast milk was not difficult to provide.

Gretchen Peterson, Human Resources Manager for Hanna Andersson clothing design, manufacturer and retail store, said that ''legislation to encourage longer-term breastfeeding by eliminating potential workplace barriers has been successfully passed and implemented in Oregon with no negative impact to business.'' She goes on to say, ''Without this opportunity, our employees may have made the choice to stay at home or choose to work for another company which would have caused a significant disruption to our business.''

Research from the Maternal Child Health Bureau demonstrates a significant return on investment when businesses support worksite lactation programs.

The Mutual of Omaha insurance company conducted a study that found health care costs for newborns to be three times lower for babies whose mothers participate in their company's maternity and lactation program. Per person health care costs were $2,146 more for employees who did not participate in the program, with a yearly savings of $115,881 in health care claims for the breastfeeding mothers and babies.

This is truly a public health issue. Encouraging breastfeeding for working mothers will help alleviate the negative effects of low breastfeeding rates, including a 21 percent greater infant mortality rate for babies not exclusively breastfed for 6 months, and

greater risk over a lifetime for many illnesses including asthma, diabetes, obesity, and certain cancers.

Finally, the timing could not be better as we ramp up our efforts to reform our health care system and work to contain costs. A 2001 USDA study found that if half of the babies in the U.S. were exclusively breastfed for 6 months, we would realize a savings of $3.6 billion in health care costs for the three leading childhood illnesses alone. According to the U.S. Breastfeeding Committee, if we replicate that study based on current breastfeeding statistics, the savings could reach nearly $14 billion in health care costs for all childhood illnesses.

Colleagues, I look forward to passing the Breastfeeding Promotion Act to help make it easier for moms to breastfeed, which will lead to healthier babies, stronger families, and happier workers.

Mr. WHITEHOUSE (for himself and Ms. SNOWE):

S. 1245. A bill to amend the Internal Revenue Code of 1986 to provide a tax credit for property owners who remove lead-based paint hazards; to the Committee on Finance.

Ms. SNOWE. Mr. President, I rise today along with my friend Senator WHITEHOUSE to introduce the Home Lead Safety Tax Credit Act. Unfortunately, lead paint remains a serious risk to families across the country and poses an especially dangerous hazard for children. According to the Department of Housing and Urban Development, HUD, 23 million homes in the United States currently have a significant amount of lead-based paint, and exposure has caused 240,000 children under the age of six to have blood-lead levels high enough to cause irreversible neurological damage and learning disabilities.

The current Federal abatement programs are simply inadequate to address the home repair requirements of millions of families who remain exposed to lead. In fiscal year 2008, HUD's Lead Hazard Control Program provided for lead abatement of only 12,600 homes. It doesn't take an advanced degree in mathematics to know that 12,600 is an insufficient abatement number when 240,000 children have already been exposed to harmful levels of lead-based paint.

The tax credit in the Whitehouse-Snowe bill would be worth up to $3,000 per eligible housing unit for abatement costs or up to $1,000 for each unit for interim control costs—which reduce but do not eliminate the hazard. These incentives will encourage property owners to make their homes and properties lead-safe. According to the Maine Indoor Air Quality Council, almost 80 percent of homes and apartments in Maine built before 1978 could have lead paint. That being said, the tax credit in our legislation will help greatly reduce that number and in turn reduce the number of children who require medical treatment as a result of lead exposure.

The Whitehouse-Snowe bill will provide a powerful tax incentive to landlords and make a much greater impact in reducing household lead exposure. It is no surprise that many of our poorest residents are the most affected by lead-based paint illnesses. Whatever their economic situation, no family should be forced to choose between affordability and the safety of their children. Our citizens are facing a multitude of difficult financial decisions in the midst of the current recession, and many people are unable to bear the costs of lead abatement.

It is not news that health care costs are spiraling out of control, and Congress is working hard to find a solution to this complicated problem. Lead-based paint does not require such a complicated solution, and the Home Lead Safety Tax Credit Act takes a proactive role in preventing an illness that doesn't have to exist at all. Children exposed to lead-based paint will pay thousands of dollars in health care costs. Our legislation will not only save the lives of children across our country, but help mitigate the unnecessary burden of lead-based paint poisoning on our health care system. We must do everything in our power to encourage landlords an property owners to rid homes of harmful lead-based paint and I hope my colleagues will join us in supporting this legislation.

By Mr. SANDERS:

S. 1246. A bill to establish a home energy retrofit finance program; to the Committee on Energy and Natural Resources.

Mr. SANDERS. Mr. President, I am pleased to introduce legislation to establish a Home Energy Retrofit Finance Program. My office has worked closely with a number of stakeholders and experts in developing this Program. It is supported by the Vermont Energy Investment Corporation, the National Trust for Historic Preservation, Green for All, the Apollo Alliance, and the Union of Concerned Scientists, because they know that improving residential sector energy use is a strategy to address global warming, save families on their utility bills, and create jobs.

Households across the Nation will be able to lower their energy bills and generate their own renewable energy through the Program. It would provide initial capital to States, according to the established State energy program formula, to set up state revolving finance funds. These State funds would in turn provide financial support for local government programs, such as clean energy district financing, and energy utility programs, such as on-bill financing.

There are already a number of innovative programs to help finance residential energy efficiency and renewable energy across the country. For example, States such as Vermont, New Mexico, California, Virginia, Texas, and Maryland have authorized local governments to provide financing to homeowners for energy improvements. Homeowners then can pay back the cost of the improvements over time on their property tax bills.

The Home Energy Retrofit Finance Program would give these efforts a boost by supporting local government and utility programs that provide households with cost-effective financing for energy efficiency measures and renewable energy. This Program offers a win-win situation where we can achieve our economic and environmental goals. I ask that my colleagues consider the merits of the Home Energy Retrofit Finance Program as we move forward with comprehensive energy and climate change legislation.

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

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

S. 1246

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Home Energy Retrofit Finance Program Act''.

SEC. 2. FINDINGS.

Congress finds that—

(1) many families lack access to upfront capital to make cost-effective energy improvements to homes and apartments;

(2) a number of States, local governments, and energy utilities are considering enacting, or have already enacted, innovative energy efficiency and renewable energy finance programs;

(3) home retrofits create and support jobs in the United States in a number of fields, including jobs for electricians, heating and air conditioning installers, carpenters, construction, roofers, industrial truck drivers, energy auditors and inspectors, construction managers, insulation workers, renewable energy installers, and others;

(4) cost-effective energy improvements pay for themselves over time and also save consumers energy, reduce energy demand and peak electricity demand, move the United States towards energy independence, reduce greenhouse gas emissions, and improve the value of residential properties;

(5) modeling has shown that—

(A) energy efficiency and renewable energy upgrades in just 15 percent of residential buildings in the United States would require $280,000,000,000 in financing; and

(B) the upgrades described in subparagraph (A) could reduce carbon dioxide emissions by more than a gigaton; and

(6) home retrofits—

(A) are a key strategy to reducing global warming pollution; and

(B) create and support green jobs.

SEC. 3. DEFINITIONS.

In this Act:

(1) ELIGIBLE PARTICIPANT.—The term ''eligible participant'' means a homeowner, apartment complex owner, residential cooperative association, or condominium association that finances energy efficiency measures and renewable energy improvements to homes and residential buildings under this Act.

(2) ENERGY EFFICIENCY MEASURE AND RENEWABLE ENERGY IMPROVEMENT.—The term

''energy efficiency measure and renewable energy improvement'' means any installed measure (including products, equipment, systems, services, and practices) that would result in a reduction in—

(A) end-use demand for externally supplied energy or fuel by a consumer, facility, or user; and

(B) carbon dioxide emissions, as determined by the Secretary.

(3) PROGRAM.—The term ''program'' means the Home Energy Retrofit Finance Program established under section 4(a).

(4) QUALIFIED PROGRAM DELIVERY ENTITY.—The term ''qualified program delivery entity'' means a local government, energy utility, or any other entity designated by the Secretary that administers the program for a State under this Act.

(5) SECRETARY.—The term ''Secretary'' means the Secretary of Energy.

SEC. 4. HOME ENERGY RETROFIT FINANCE PROGRAM.

(a) ESTABLISHMENT.—The Secretary shall provide Home Energy Retrofit Finance Program grants to States for the purpose of establishing or expanding a State revolving finance fund to support financing offered by qualified program delivery entities for energy efficiency measures and renewable energy improvements to existing homes and residential buildings (including apartment complexes, residential cooperative associations, and condominium buildings under 5 stories).

(b) FUNDING MECHANISM.—In carrying out the program, the Secretary shall provide funds to States, for use by qualified program delivery entities that administer finance programs directly or under agreements with collaborating third party entities, to capitalize revolving finance funds and increase participation in associated financing programs.

(c) ELIGIBILITY OF QUALIFIED PROGRAM DELIVERY ENTITIES.—

(1) IN GENERAL.—The Secretary shall provide guidance to the States on application requirements for a local government or energy utility that seeks to participate in the program, including criteria that require, at a minimum—

(A) a description of a method for determining eligible energy professionals who can be contracted with under the program for energy audits and energy improvements, including a plan to provide preference for entities that—

(i) hire locally;

(ii) partner with State Workforce Investment Boards, labor organizations, community-based organizations, and other job training entities; or

(iii) are committed to ensuring that at least 15 percent of all work hours are performed by participants from State-approved apprenticeship programs; and

(B) a certification that all of the work described in subparagraph (A) will be carried out in accordance with subchapter IV of chapter 31 of title 40, United States Code.

(2) REPAYMENT OVER TIME.—To be eligible to participate in the program, a qualified program delivery entity shall establish a method by which eligible participants may pay over time for the financed cost of allowable energy efficiency measures and renewable energy improvements.

(d) ALLOCATION.—In making funds available to States for each fiscal year under this Act, the Secretary shall use the allocation formula used to allocate funds to States to carry out State energy conservation plans under part D of title III of the Energy Policy and Conservation Act (42 U.S.C. 6321 et seq.).

(e) USE OF FUNDS.—Of the amounts in a State revolving finance fund—

(1) not more than 20 percent may be used by qualified program delivery entities for interest rate reductions for eligible participants; and

(2) the remainder shall be available to provide direct funding or other financial support to qualified program delivery entities.

(f) STATE REVOLVING FINANCE FUNDS.—On repayment of any funds made available by qualified program delivery entities under the program, the funds shall be deposited in the applicable State revolving finance fund to support additional financing to qualified program delivery entities for energy efficiency measures and renewable energy improvements.

(g) COORDINATION WITH STATE ENERGY EFFICIENCY RETROFIT PROGRAMS.—Home energy retrofit programs that receive financing through the program shall be carried out in accordance with all authorized measures, performance criteria, and other requirements of any applicable Federal home energy efficiency retrofit programs.

(h) PROGRAM EVALUATION.—

(1) IN GENERAL.—The Secretary shall conduct a program evaluation to determine—

(A) how the program is being used by eligible participants, including what improvements have been most typical and what regional distinctions exist, if any;

(B) what improvements could be made to increase the effectiveness of the program; and

(C) the quantity of verifiable energy savings and renewable energy deployment achieved through the program.

(2) REPORTS.—

(A) IN GENERAL.—Not later than 3 years after the date of enactment of this Act, the Secretary shall submit to the Committee on Energy and Natural Resources of the Senate and the Committee on Energy and Commerce of the House of Representatives a report that describes the results of the program evaluation required under this subsection, including any recommendations.

(B) STATE REPORTS.—Not less than once every 2 years, States participating in the program shall submit to the Secretary reports on the use of funds through the program that include any information that the Secretary may require.

SEC. 5. AUTHORIZATION OF APPROPRIATIONS.

(a) IN GENERAL.—There are authorized to be appropriated such sums as are necessary to carry out this Act for each of fiscal years 2010 through 2015.

(b) ADMINISTRATIVE EXPENSES.—An amount not exceeding 5 percent of the amounts made available under subsection (a) shall be available for each fiscal year to pay the administrative expenses necessary to carry out this Act.

By Mr. CASEY:

S. 1248. A bill to establish a program in the Department of Energy to encourage consumers to trade in older vehicles for more fuel-efficient vehicles and motorcycles, and for other purposes; to the Committee on Finance.

Mr. CASEY. Mr. President, I rise today to introduce the Green Transportation Efficiency Act of 2009. This bill would establish a voucher program in the Department of Energy to encourage American consumers to trade in their older, less fuel-efficient vehicles for new, more fuel-efficient vehicles, including motorcycles.

This act is very similar to other ''cash for clunkers'' bills offered in the House and Senate in that it will help stimulate the economy by providing a much needed boost to our struggling automobile industry, but will go a step further by bolstering the U.S. motorcycle industry as well. After 14 straight years of growth, sales of motorcycles in the U.S. declined eight percent in 2007, and, 10 percent in 2008. Due in large part to the downturn in our economy, motorcycle sales have dropped 30 percent in the first quarter of 2009, according to the Motorcycle Industry Council. In my home State of Pennsylvania, Harley-Davidson has had to cut production and reduce its work force as a result of these declines in motorcycle sales. Established in 1973, the Harley-Davidson assembly plant in York, PA, is the company's largest manufacturing facility and is the third largest employer in York County, PA, employing over 2,200 people. It has been reported that it is probably the leanest time that Harley has faced since the company went public in 1986. Harley-Davidson, like the auto makers and other manufacturing sectors, is fighting hard to maintain its workforce and to continue to produce a high quality, American-made product during these tough economic times. However, the specter of further reductions in motorcycle sales could lead to further job losses in my State, a State already hard hit by the current economic crisis.

Indeed, the economic impact of the American motorcycle industry also extends far beyond the direct employment at facilities such as the Harley-Davidson manufacturing plants in Pennsylvania, Missouri, or Wisconsin. Many of the same parts suppliers that provide the critical supply chain for our American auto manufacturers, in States such as Michigan, Indiana, Ohio, and many others, also rely upon motorcycle manufacturers as critical customers. These parts manufacturers and suppliers will also be aided by increased motorcycle sales. The effect of increased motorcycle sales will be immediate and meaningful. For example, Harley-Davidson utilizes ''Just In Time'' manufacturing principles, meaning they do not hold parts inventories. So, every new bike ordered triggers new orders for parts—there is very little elasticity in the supply chain, so the economic benefit down the line is immediate.

Finally, in terms of economic activity, this act recognizes the challenges faced by our auto dealerships and the best way to help those dealerships is to encourage the purchasing of new, more fuel-efficient vehicles. The same principle applies to our motorcycle dealers.

In addition to helping to spur economic recovery and protect manufacturing jobs in Pennsylvania and other parts of the country where motorcycles and motorcycle parts are manufactured and assembled, the inclusion of motorcycles in this act will help America move away from its dependence on foreign sources of oil. Motorcycles are inherently fuel efficient. Average miles-per-gallon for motorcycles ranges from 40–50 MPG, even higher for smaller bikes.

Allowing consumers the option of trading in their older, inefficient vehicles for newer, more fuel efficient cars, trucks, and motorcycles will help the Nation achieve the dual goals of reducing our demand for imported oil and reducing our emissions of greenhouse gases—both critical components of our energy future. Just as importantly, the act will provide a much needed jump start to the auto and motorcycle industries at a time when their sales are at historic lows, plants are closing, and jobs are being lost.

I urge all of my colleagues to join me in support of this Act so that consumers are given a strong signal from Washington to trade in their older, inefficient vehicles and purchase new, high-fuel-efficient cars, trucks, or motorcycles.

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

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

S. 1248

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Green Transportation Efficiency Act of 2009''.

SEC. 2. DEFINITIONS.

In this Act:

(1) AUTOMOBILE.—The term ''automobile'' has the meaning given the term in section 32901(a) of title 49, United States Code.

(2) CATEGORY 1 TRUCK.—

(A) IN GENERAL.—The term ''category 1 truck'' means a non-passenger automobile that has a combined fuel economy value of at least 18 miles per gallon.

(B) EXCLUSION.—The term ''category 1 truck'' does not include a category 2 truck.

(3) CATEGORY 2 TRUCK.—The term ''category 2 truck'' means a non-passenger automobile that is a large van or a large pickup, as categorized by the Secretary using the method used by the Environmental Protection Agency and described in the report entitled ''Light-Duty Automotive Technology and Fuel Economy Trends: 1975 through 2008''.

(4) CATEGORY 3 TRUCK.—The term ''category 3 truck'' means a work truck.

(5) COMBINED FUEL ECONOMY VALUE.—The term ''combined fuel economy value'' means—

(A) in the case of a qualifying vehicle, the number, expressed in miles per gallon, centered below the term ''Combined Fuel Economy'' on the label required to be affixed or caused to be affixed on a qualifying vehicle pursuant to part 600 of title 40, Code of Federal Regulations (or comparable regulations);

(B) in the case of an eligible trade-in vehicle, the equivalent of the number described in subparagraph (A) that is posted—

(i) under the term ''Estimated New EPA MPG'' and above the term ''Combined'' for vehicles of model years 1984 through 2007; or

(ii) under the term ''New EPA MPG'' and above the term ''Combined'' for vehicles of model year 2008 or later on the fuel economy website of the Environmental Protection Agency for the make, model, and year of the vehicle; or

(C) in the case an eligible trade-in vehicle manufactured during model years 1978 through 1984, the equivalent of the number described in subparagraph (A), as determined by the Secretary (and posted on the website of the National Highway Traffic Safety Administration) using data maintained by the Environmental Protection Agency for the make, model, and year of the eligible trade-in vehicle.

(6) DEALER.—The term ''dealer'' means a person licensed by a State who engages in the sale of new automobiles to ultimate purchasers.

(7) ELIGIBLE TRADE-IN VEHICLE.—The term ''eligible trade-in vehicle'' means an automobile, work truck, or motorcycle that, at the time the automobile, work truck, or motorcycle is presented for trade-in under this Act—

(A) is in drivable condition;

(B) has been continuously insured consistent with the applicable State law and registered to the same owner for a period of not less than 1 year immediately prior to the trade-in;

(C) was manufactured less than 25 years before the date of the trade-in; and

(D) in the case of an automobile, has a combined fuel economy value of 18 miles per gallon or less.

(8) MOTORCYCLE.—The term ''motorcycle'' means a motor vehicle with motive power having a seat or saddle for the use of the rider and designed to travel on not more than 3 wheels in contact with the ground.

(9) NEW FUEL-EFFICIENT AUTOMOBILE.—The term ''new fuel-efficient automobile'' means a passenger automobile, category 1 truck, category 2 truck, or category 3 truck—

(A) the equitable or legal title of which has not been transferred to any person other than the ultimate purchaser;

(B) that carries a manufacturer's suggested retail price of $45,000 or less;

(C) that—

(i) in the case of a passenger automobile, category 1 truck, or category 2 truck, is certified to applicable standards established under section 86.1811–04 of title 40, Code of Federal Regulations (or a successor regulation); or

(ii) in the case of a category 3 truck, is certified to the applicable vehicle or engine standards established under section 86.1816–08, 86.007–11, or 86.008–10 of title 40, Code of Federal Regulations (or successor regulations); and

(D) that has the combined fuel economy value of—

(i) in the case of a passenger automobile, 22 miles per gallon;

(ii) in the case of a category 1 truck, 18 miles per gallon; and

(iii) in the case of a category 2 truck or a category 3 truck, 15 miles per gallon.

(10) NEW FUEL-EFFICIENT MOTORCYCLE.—The term ''new fuel-efficient motorcycle'' means a motorcycle—

(A) the equitable or legal title of which has not been transferred to any person other than the ultimate purchaser;

(B) that carries a manufacturer's suggested retail price of not less than $7,000 and not more than $20,000; and

(C) that has a manufacturer's estimated combined fuel economy of at least 40 miles per gallon.

(11) NON-PASSENGER AUTOMOBILE.—The term ''non-passenger automobile'' has the meaning given the term in section 32901(a) of title 49, United States Code.

(12) PASSENGER AUTOMOBILE.—The term ''passenger automobile'' means a passenger automobile (as defined in section 32901(a) of title 49, United States Code) that has a combined fuel economy value of at least 22 miles per gallon.

(13) PROGRAM.—The term ''Program'' means the Green Transportation Efficiency Program established by section 3.

(14) QUALIFYING LEASE.—The term ''qualifying lease'' means a lease of an automobile for a period of not less than 5 years.

(15) QUALIFYING VEHICLE.—The term ''qualifying vehicle'' means—

(A) a new fuel-efficient automobile; or

(B) a new fuel-efficient motorcycle.

(16) SCRAPPAGE VALUE.—The term ''scrappage value'' means the amount received by the dealer for a vehicle on transferring title of the vehicle to the person responsible for ensuring the dismantling and destroying of the vehicle.

(17) SECRETARY.—The term ''Secretary'' means the Secretary of Energy.

(18) ULTIMATE PURCHASER.—The term ''ultimate purchaser'' means, in the case of any qualifying vehicle, the first person who in good faith purchases the qualifying vehicle for purposes other than resale.

(19) VEHICLE IDENTIFICATION NUMBER.—The term ''vehicle identification number'' means the 17-character number used by the automobile industry to identify individual automobiles.

(20) WORK TRUCK.—The term ''work truck'' has the meaning given the term in section 32901(a) of title 49, United States Code.

SEC. 3. GREEN TRANSPORTATION EFFICIENCY PROGRAM.

(a) ESTABLISHMENT.—There is established in the Department of Energy a voluntary program to be known as the ''Green Transportation Efficiency Program'' under which the Secretary, in accordance with this section and regulations issued under subsection (h), shall—

(1) authorize the issuance of an electronic voucher in accordance with subsection (c) to offset the purchase price, or lease price for a qualifying lease, of a qualifying vehicle on the surrender of an eligible trade-in vehicle to a dealer participating in the Program;

(2) certify dealers for participation in the Program—

(A) to accept vouchers in accordance with this section as partial payment or down payment for the purchase or qualifying lease of any qualifying vehicle offered for sale or lease by the dealer; and

(B) in accordance with subsection (c)(2), to transfer each eligible trade-in vehicle surrendered to the dealer to an entity for disposal;

(3) in consultation with the Secretary of the Treasury, make electronic payments to dealers for vouchers accepted by the dealers, in accordance with the regulations issued under subsection (h);

(4) in consultation with the Secretary of the Treasury, provide for the payment of rebates to persons who qualify for a rebate under subsection (c)(3); and

(5) in consultation with the Secretary of the Treasury and the Inspector General of the Department of Energy, establish and provide for the enforcement of measures to prevent and penalize fraud under the Program.

(b) QUALIFICATIONS FOR AND VALUE OF VOUCHERS.—

(1) IN GENERAL.—A voucher issued under the Program shall have a value that may be applied to offset the purchase price, or lease price for a qualifying lease, of a qualifying vehicle in accordance with this subsection.

(2) NEW FUEL-EFFICIENT AUTOMOBILES.—

(A) $3,500 VALUE.—A voucher may be used to offset the purchase price or lease price of a new fuel-efficient automobile by $3,500 if the new fuel-efficient automobile is —

(i) a passenger automobile and the combined fuel economy value of the passenger automobile is at least 4 miles per gallon higher than the combined fuel economy value of the eligible trade-in vehicle;

(ii) a category 1 truck and the combined fuel economy value of the category 1 truck is at least 2 miles per gallon higher than the

combined fuel economy value of the eligible trade-in vehicle;

(iii) a category 2 truck that has a combined fuel economy value of at least 15 miles per gallon and—

(I) the eligible trade-in vehicle is a category 2 truck and the combined fuel economy value of the new fuel-efficient automobile is at least 1 mile per gallon higher than the combined fuel economy value of the eligible trade-in vehicle; or

(II) the eligible trade-in vehicle is a category 3 truck of model year 2001 or earlier; or

(iv) a category 3 truck and the eligible trade-in vehicle is a category 3 truck of model year of 2001 or earlier and is of similar size or larger than the new fuel-efficient automobile, as determined in a manner prescribed by the Secretary.

(B) $4,500 VALUE.—A voucher may be used to offset the purchase price or lease price of the new fuel-efficient automobile by $4,500 if the new fuel-efficient automobile is—

(i) a passenger automobile and the combined fuel economy value of the passenger automobile is at least 10 miles per gallon higher than the combined fuel economy value of the eligible trade-in vehicle;

(ii) a category 1 truck and the combined fuel economy value of the category 1 truck is at least 5 miles per gallon higher than the combined fuel economy value of the eligible trade-in vehicle; or

(iii) a category 2 truck that has a combined fuel economy value of at least 15 miles per gallon and the combined fuel economy value of the category 2 truck is 2 miles per gallon higher than the combined fuel economy value of the eligible trade-in vehicle and the eligible trade-in vehicle is a category 2 truck.

(3) NEW FUEL-EFFICIENT MOTORCYCLES.—A voucher may be used to offset the purchase price of the new fuel-efficient motorcycle by $2,500 if—

(A) the new fuel-efficient motorcycle is street-use approved; and

(B) the manufacturer's estimated combined fuel economy is at least 15 miles higher than the combined fuel economy value of the eligible trade-in vehicle.

(c) PROGRAM SPECIFICATIONS.—

(1) LIMITATIONS.—

(A) GENERAL PERIOD OF ELIGIBILITY.—A voucher issued under the Program shall be used only for the purchase or qualifying lease of a qualifying vehicle that occurs during the period—

(i) beginning on January 1, 2009; and

(ii) ending on the date that is 3 years after the date on which the regulations issued under subsection (h) are issued.

(B) NUMBER OF VOUCHERS PER PERSON AND PER TRADE-IN VEHICLE.—

(i) SINGLE PERSON.—Not more than 1 voucher may be issued for a single person.

(ii) JOINT REGISTERED OWNERS.—Not more than 1 voucher may be issued for the joint registered owners of a single eligible trade-in vehicle.

(C) NO COMBINATION OF VOUCHERS.—Only 1 voucher issued under the Program may be applied toward the purchase or qualifying lease of a qualifying vehicle.

(D) LIMITATION ON FUNDS FOR CATEGORY 3 TRUCKS AND MOTORCYCLES.—Not more than 7.5 percent and 15 percent of the total funds made available for the Program shall be used for vouchers for the purchase or qualifying lease of category 3 trucks and motorcycles, respectively.

(E) COMBINATION WITH OTHER INCENTIVES PERMITTED.—The availability or use of a Federal, State, or local incentive or a State-issued voucher for the purchase or lease of a qualifying vehicle shall not limit the value or issuance of a voucher under the Program to any person otherwise eligible to receive the voucher.

(F) NO ADDITIONAL FEES.—A dealer participating in the Program may not charge a person purchasing or leasing a qualifying vehicle any additional fees associated with the use of a voucher under the Program.

(G) NUMBER AND AMOUNT.—The total number and value of vouchers issued under the Program may not exceed the amounts made available for vouchers under subsection (i).

(2) DISPOSITION OF ELIGIBLE TRADE-IN VEHICLES.—

(A) IN GENERAL.—Subject to subparagraph (B), for each eligible trade-in vehicle surrendered to a dealer under the Program, the dealer shall certify to the Secretary, in such manner as the Secretary shall prescribe by regulation, that the dealer—

(i) has not and will not sell, lease, exchange, or otherwise dispose of the eligible trade-in vehicle for use as an automobile in the United States or in any other country; and

(ii) will transfer the eligible trade-in vehicle (including the engine and drive train), in such manner as the Secretary prescribes, to an entity that will ensure that the eligible trade-in vehicle—

(I) will be crushed or shredded within such period and in such manner as the Secretary prescribes; and

(II) has not been, and will not be, sold, leased, exchanged, or otherwise disposed of for use as an automobile in the United States or in any other country.

(B) SALE OF PARTS.—Nothing in subparagraph (A) prevents a person who dismantles or disposes of an eligible trade-in vehicle from—

(i) selling any parts of the disposed eligible trade-in vehicle other than the engine block and drive train (unless the engine or drive train has been crushed or shredded); or

(ii) retaining the proceeds from the sale.

(C) COORDINATION.—

(i) IN GENERAL.—The Secretary shall coordinate with the Attorney General and the Secretary of Transportation to ensure that the National Motor Vehicle Title Information System and other publicly accessible systems are appropriately updated on a timely basis to reflect the crushing or shredding of eligible trade-in vehicles under this section and appropriate reclassification of the titles of the eligible trade-in vehicles.

(ii) ACCESS TO VINS.—The commercial market shall have electronic and commercial access to the vehicle identification numbers of eligible trade-in vehicles that have been disposed of on a timely basis.

(3) ELIGIBLE PURCHASES OR LEASES PRIOR TO DATE OF ENACTMENT.—A person who purchased or leased a qualifying vehicle after January 1, 2009, and before the date of the enactment of this Act, shall be eligible for a cash rebate equivalent to the amount described in subsection (b)(2)(A) if the person proves to the satisfaction of the Secretary that—

(A)(i) the person was the registered owner of an eligible trade-in vehicle; or

(ii) if the person leased the qualifying vehicle, the lease was a qualifying lease; and

(B) the eligible trade-in vehicle has been disposed of in accordance with paragraph (2)(A).

(d) ANTI-FRAUD PROVISIONS.—

(1) VIOLATION.—It shall be unlawful for any person to knowingly violate this section (including a regulation issued pursuant to subsection (h)).

(2) PENALTIES.—Any person who commits a violation described in paragraph (1) shall be liable to the United States Government for a civil penalty of not more than $15,000 for each violation.

(e) INFORMATION TO CONSUMERS AND DEALERS.—

(1) IN GENERAL.—Not later than 60 days after the date of the enactment of this Act and promptly on the updating of any applicable information, the Secretary shall make available on an Internet website and through other means determined by the Secretary information about the Program, including—

(A) how to determine if a vehicle is an eligible trade-in vehicle;

(B) how to participate in the Program, including how to determine participating dealers; and

(C) a comprehensive list, by make and model, of qualifying vehicles meeting the requirements of the Program.

(2) PUBLIC AWARENESS CAMPAIGN.—Once information described in paragraph (1) is available, the Secretary shall conduct a public awareness campaign to inform consumers about the Program and where to obtain additional information.

(f) RECORDKEEPING AND REPORT.—

(1) DATABASE.—The Secretary, in coordination with the Secretary of Transportation, shall maintain a database of the vehicle identification numbers of all qualifying vehicles purchased or leased and all eligible trade-in vehicles disposed of under the Program.

(2) REPORT.—Not later than 60 days after the termination date described in subsection (c)(1)(A)(ii), the Secretary shall submit to the Committee on Energy and Commerce of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report that describes the efficacy of the Program, including—

(A) a description of Program results, including—

(i) the total number and amount of vouchers issued for purchase or lease of qualifying vehicles by manufacturer (including aggregate information concerning the make, model, model year, and category of automobile and motorcycle);

(ii) aggregate information regarding the make, model, model year, and manufacturing location of eligible trade-in vehicles traded in under the Program; and

(iii) the location of sale or lease;

(B) an estimate of the overall increase in fuel efficiency in terms of miles per gallon, total annual oil savings, and total annual greenhouse gas reductions, as a result of the Program; and

(C) an estimate of the overall economic and employment effects of the Program.

(g) EXCLUSION OF VOUCHERS AND REBATES FROM INCOME.—

(1) FOR PURPOSES OF ALL FEDERAL PROGRAMS.—A voucher issued under the Program or a cash rebate issued under subsection (c)(3) shall not be regarded as income and shall not be regarded as a resource for the month of receipt of the voucher or rebate and the following 12 months, for purposes of determining the eligibility of the recipient of the voucher or rebate (or the spouse or other family or household member of the recipient) for benefits or assistance, or the amount or extent of benefits or assistance, under any Federal program.

(2) FOR PURPOSES OF TAXATION.—A voucher issued under the Program or a cash rebate issued under subsection (c)(3) shall not be considered as gross income for purposes of the Internal Revenue Code of 1986.

(h) REGULATIONS.—Notwithstanding section 553 of title 5, United States Code, not later than 30 days after the date of the enactment of this Act, the Secretary shall issue final regulations to implement the Program, including regulations that—

(1) provide for a means of certifying dealers for participation in the Program;

(2) establish procedures for the reimbursement of dealers participating in the Program to be made through electronic transfer of funds for both the amount of the vouchers and any reasonable administrative costs incurred by the dealer as soon as practicable but not later than 10 days after the submission to the Secretary of a voucher for a qualifying vehicle;

(3) allow the dealer to use the voucher in addition to any other rebate or discount offered by the dealer or the manufacturer for a qualifying vehicle and prohibit the dealer from using the voucher to offset any such other rebate or discount;

(4) require dealers to disclose to the person trading in an eligible trade-in vehicle the best estimate of the scrappage value of the vehicle and to permit the dealer to retain $50 of any amounts paid to the dealer for scrappage of the eligible trade-in vehicle as payment for any administrative costs to the dealer associated with participation in the Program;

(5) establish a process by which persons who qualify for a rebate under subsection (c)(3) may apply for the rebate;

(6) consistent with subsection (c)(2), establish requirements and procedures for the disposal of eligible trade-in vehicles and provide such information as may be necessary to entities engaged in the disposal to ensure that the eligible trade-in vehicles are disposed of in accordance with the requirements and procedures, including—

(A) requirements for the removal and appropriate disposition of refrigerants, antifreeze, lead products, mercury switches, and such other toxic or hazardous vehicle components prior to the crushing or shredding of an eligible trade-in vehicle, in accordance with procedures established by the Secretary in consultation with the Administrator of the Environmental Protection Agency, and in accordance with other applicable Federal and State requirements;

(B) a mechanism for dealers to certify to the Secretary that each eligible trade-in vehicle will be transferred to an entity that will ensure that the eligible trade-in vehicle is disposed of, in accordance with the requirements and procedures, and to submit the vehicle identification numbers of the vehicles disposed of and the qualifying vehicle purchased with each voucher; and

(C) a list of entities to which dealers may transfer eligible trade-in vehicles for disposal;

(7) consistent with subsection (c)(2), establish requirements and procedures for the disposal of eligible trade-in vehicles and provide such information as may be necessary to entities engaged in the disposal to ensure that the eligible trade-in vehicles are disposed of in accordance with the requirements and procedures; and

(8) provide for the enforcement of the penalties described in subsection (d).

(i) FUNDING.—From the amounts made available under the American Recovery and Reinvestment Act of 2009 (Public Law 111–5), the Director of the Office of Management and Budget may allocate such sums as the Director determines are necessary to carry out this Act.

By Mr. NELSON, of Florida (for himself, Mr. CRAPO, Mr. BINGAMAN, Mr. BENNET, Mr. MARTINEZ, Mr. CARDIN, and Mr. BROWNBACK):

S. 1250. A bill to amend the Internal Revenue code of 1986 to expand the definition of cellulosic biofuel to include algae-based biofuel for purposes of the cellulosic biofuel producer credit and the special allowance for cellulosic biofuel plant property; to the Committee on Finance.

Mr. NELSON of Florida. Mr. President, I rise today to introduce, with several of my colleagues, the Algae-based Renewable Fuel Promotion Act.

The energy, environmental, and food supply challenges confronting our nation are immense. The United States imports roughly 60 percent of the crude oil consumed domestically, much of it from unstable parts of the world. As global demand continues to rise, price shocks in oil markets are increasingly common, causing economic pain and hardship for American consumers. Our overwhelming reliance on traditional fossil fuels contributes to unsustainable greenhouse gas emissions levels and the damaging effects of global warming. Ethanol made from corn or soybean—also called first generation biofuels—serve an important function in diversifying our energy base, but their benefits are largely offset by their adverse effects on food prices and the environment.

Addressing these challenges requires a multi-faceted strategy that invests in renewable and alternative energy sources, green technology, and conservation measures. If we succeed, the payoff will be a cleaner, healthier, and more economically prosperous future.

I was pleased that the economic stimulus legislation enacted earlier this year included important investments in renewable energy and green technology programs. It also included a number of expanded tax incentives, including tax credits for renewable energy sources, such as wind, geothermal, hydropower, and biomass; energy-efficient home improvements; and plug-in electric vehicles, to name just a few.

The legislation I am introducing today with six of my colleagues in the Senate—three on each side of the aisle—builds on these investments and incentives by recognizing the powerful potential of a new and emerging energy source, algae.

After years of basic research at the academic and governmental level, new algae-based fuels are poised to move from the experimentation stage to commercial development. These fuels have the potential to make a significant contribution to our energy future. Algae are one of nature's most prolific and efficient photosynthetic organisms. They have a short growing cycle, high oil content, and can require little land or potable water. An algae-based fuel needs only sunlight, CO_2, and in some cases, other nutrient inputs to produce biomass that can be converted into readily usable liquid transportation fuels—gasoline, jet fuel, and diesel. Unlike some of the other energy sources currently under development, algae-based fuels are ''drop-in'' fuels, that is to say, they can be incorporated into our existing energy infrastructure, including our pipelines, terminals, and our fleet of trucks, cars and jets.

For example, over the past several months, commercial airlines have flown four successful test flights using a variety of biofuel jet fuel blends, including a Continental Airlines flight using a blend of algae- and jatropha-derived biofuel and a Japan Airlines flight using a similar blend that also included camelina.

Moreover, some algae-based fuel production processes even sequester and consume CO_2. Algae production facilities can use CO_2 emitted by a coal-fired electric utility as a feedstock for the production of the fuel. As a result, algae-based fuels can help transform the energy landscape by shifting our energy consumption to a renewable, home-grown fuel that is carbon neutral or better.

Unfortunately, current Federal tax policy inhibits the production of algae-based fuels by failing to provide a level playing—field relative to other alternative and renewable fuels. Tax incentives currently apply to the production of liquefied petroleum gas, compressed or liquefied natural gas, ethanol, liquefied hydrogen, biodiesel, liquid fuels derived from coal, and other alternative fuels. Many of these incentives were added to the tax code well before recent technological developments demonstrated the extraordinary promise of algae as a renewable fuel source. In order to ensure that Federal tax incentives stimulate the most promising and environmentally beneficial energy sources available, the tax code should be updated to incorporate and promote algae-based fuel production.

The Algae-based Renewable Fuel Promotion Act would make two modest changes to the tax code to promote the development and commercialization of algae-based fuels in the U.S. First, the bill would expand the $1.01 per gallon income tax credit for cellulosic biofuels to cover algae-based biofuels. The bill retains the current law December 31, 2012, expiration date for the cellulosic biofuel producer credit. Second, the bill would extend the capital investment tax incentives for cellulosic biofuels to cover equipment used to produce algae-based fuels. Specifically, the bill would modify the 50 percent bonus depreciation provision for property used to produce cellulosic biofuel by extending the provision to qualified algae-based biofuel plant property. The bill retains the current law requirement that qualified property must be placed in service before January 1, 2013. By ensuring that algae-based fuels fully benefit under Federal tax policies that promote renewable and alternative fuels, the legislation will encourage investment in this sustainable energy source and make an important contribution to our energy landscape for years to come.

Algae-based fuels are just one of the many renewable and alternative energy sources under development by aggressive and entrepreneurial start-up firms. These firms seek to capitalize on the commercial opportunities presented by the transition away from reliance on fossil fuels. It is critical that we regularly review the tax code to ensure

that it encourages and promotes the most promising renewable energy sources available. The Algae-based Renewable Fuel Promotion Act is one step in this direction. I encourage my colleagues to support it.

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

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

S. 1250

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Algae-based Renewable Fuel Promotion Act of 2009''.

SEC. 2. INCLUSION OF ALGAE-BASED BIOFUEL IN DEFINITION OF CELLULOSIC BIOFUEL.

(a) CELLULOSIC BIOFUEL PRODUCER CREDIT.—

(1) GENERAL RULE.—Paragraph (4) of section 40(a) of the Internal Revenue Code of 1986 is amended by inserting ''and algae-based'' after ''cellulosic''.

(2) DEFINITIONS.—Paragraph (6) of section 40(b) of such Code is amended—

(A) by inserting ''AND ALGAE-BASED'' after ''CELLULOSIC'' in the heading,

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

''(A) IN GENERAL.—The cellulosic and algae-based biofuel producer credit of any taxpayer is an amount equal to the applicable amount for each gallon of—

''(i) qualified cellulosic biofuel production, and

''(ii) qualified algae-based biofuel production.'',

(C) by redesignating subparagraphs (F), (G), and (H) as subparagraphs (I), (J), and (K), respectively,

(D) by inserting ''AND ALGAE-BASED'' after ''CELLULOSIC'' in the heading of subparagraph (I), as so redesignated,

(E) by inserting ''or algae-based biofuel, whichever is appropriate,'' after ''cellulosic biofuel'' in subparagraph (J), as so redesignated,

(F) by inserting ''and qualified algae-based biofuel production'' after ''qualified cellulosic biofuel production'' in subparagraph (K), as so redesignated, and

(G) by inserting after subparagraph (E) the following new subparagraphs:

''(F) QUALIFIED ALGAE-BASED BIOFUEL PRODUCTION.—For purposes of this section, the term 'qualified algae-based biofuel production' means any algae-based biofuel which is produced by the taxpayer, and which during the taxable year—

''(i) is sold by the taxpayer to another person—

''(I) for use by such other person in the production of a qualified algae-based biofuel mixture in such other person's trade or business (other than casual off-farm production),

''(II) for use by such other person as a fuel in a trade or business, or

''(III) who sells such algae-based biofuel at retail to another person and places such algae-based biofuel in the fuel tank of such other person, or

''(ii) is used or sold by the taxpayer for any purpose described in clause (i).

The qualified algae-based biofuel production of any taxpayer for any taxable year shall not include any alcohol which is purchased by the taxpayer and with respect to which such producer increases the proof of the alcohol by additional distillation.

''(G) QUALIFIED ALGAE-BASED BIOFUEL MIXTURE.—For purposes of this paragraph, the term 'qualified algae-based biofuel mixture' means a mixture of algae-based biofuel and gasoline or of algae-based biofuel and a special fuel which—

''(i) is sold by the person producing such mixture to any person for use as a fuel, or

''(ii) is used as a fuel by the person producing such mixture.

''(H) ALGAE-BASED BIOFUEL.—For purposes of this paragraph—

''(i) IN GENERAL.—The term 'algae-based biofuel' means any liquid fuel, including gasoline, diesel, aviation fuel, and ethanol, which—

''(I) is produced from the biomass of algal organisms, and

''(II) meets the registration requirements for fuels and fuel additives established by the Environmental Protection Agency under section 211 of the Clean Air Act (42 U.S.C. 7545).

''(ii) ALGAL ORGANISM.—The term 'algal organism' means a single- or multi-cellular organism which is primarily aquatic and classified as a non-vascular plant, including microalgae, blue-green algae (cyanobacteria), and macroalgae (seaweeds).

''(iii) EXCLUSION OF LOW-PROOF ALCOHOL.—Such term shall not include any alcohol with a proof of less than 150. The determination of the proof of any alcohol shall be made without regard to any added denaturants.''.

(3) CONFORMING AMENDMENTS.—

(A) Subparagraph (D) of section 40(d)(3) of such Code is amended—

(i) by inserting ''AND ALGAE-BASED'' after ''CELLULOSIC'' in the heading,

(ii) by inserting ''or (b)(6)(F)'' after ''(b)(6)(C)'' in clause (ii), and

(iii) by inserting ''or algae-based'' after ''such cellulosic''.

(B) Paragraph (6) of section 40(d) of such Code is amended—

(i) by inserting ''AND ALGAE-BASED'' after ''CELLULOSIC'' in the heading, and

(ii) by striking the first sentence and inserting ''No cellulosic and algae-based biofuel producer credit shall be determined under subsection (a) with respect to any cellulosic or algae-based biofuel unless such cellulosic or algae-based biofuel is produced in the United States and used as a fuel in the United States.''

(C) Paragraph (3) of section 40(e) of such Code is amended by inserting ''AND ALGAE-BASED'' after ''CELLULOSIC'' in the heading.

(D) Paragraph (1) of section 4101(a) of such Code is amended—

(i) by inserting ''or algae-based'' after ''cellulosic'', and

(ii) by inserting ''and 40(b)(6)(H), respectively'' after ''section 40(b)(6)(E)''.

(b) SPECIAL ALLOWANCE FOR CELLULOSIC BIOFUEL PLANT PROPERTY.—Subsection (l) of section 168 of the Internal Revenue Code of 1986 is amended—

(1) by inserting ''AND ALGAE-BASED'' after ''CELLULOSIC'' in the heading,

(2) by inserting ''and any qualified algae-based biofuel plant property'' after ''qualified cellulosic biofuel plant property'' in paragraph (1),

(3) by redesignating paragraphs (4) through (8) as paragraphs (6) through (10), respectively,

(4) by inserting ''or qualified algae-based biofuel plant property'' after ''cellulosic biofuel plant property'' in paragraph (7)(C), as so redesignated,

(5) by striking ''with respect to'' and all that follows in paragraph (9), as so redesignated, and inserting ''with respect to any qualified cellulosic biofuel plant property and any qualified algae-based biofuel plant property which ceases to be such qualified property.'',

(6) by inserting ''or qualified algae-based biofuel plant property'' after ''cellulosic biofuel plant property'' in paragraph (10), as so redesignated, and

(7) by inserting after paragraph (3) the following new paragraphs:

''(4) QUALIFIED ALGAE-BASED BIOFUEL PLANT PROPERTY.—The term 'qualified algae-based biofuel plant property' means property of a character subject to the allowance for depreciation—

''(A) which is used in the United States solely to produce algae-based biofuel,

''(B) the original use of which commences with the taxpayer after December 31, 2008,

''(C) which is acquired by the taxpayer by purchase (as defined in section 179(d)) after December 31, 2008, but only if no written binding contract for the acquisition was in effect on or before such date, and

''(D) which is placed in service by the taxpayer before January 1, 2013.

''(5) ALGAE-BASED BIOFUEL.—

''(A) IN GENERAL.—The term 'algae-based biofuel' means any liquid fuel which is produced from the biomass of algal organisms.

''(B) ALGAL ORGANISM.—The term 'algal organism' means a single- or multi-cellular organism which is primarily aquatic and classified as a non-vascular plant, including microalgae, blue-green algae (cyanobacteria), and macroalgae (seaweeds).''.

(c) EFFECTIVE DATES.—

(1) CELLULOSIC BIOFUEL PRODUCER CREDIT.—The amendments made by subsection (a) shall apply to fuel produced after December 31, 2008.

(2) SPECIAL ALLOWANCE FOR CELLULOSIC BIOFUEL PLANT PROPERTY.—The amendments made by subsection (b) shall apply to property purchased and placed in service after December 31, 2008.

Mr. CRAPO. Mr. President, I rise today to speak in support of the Algae-based Renewable Fuel Promotion Act.

I would first like to thank Senator BILL NELSON for his leadership on this extraordinary piece of legislation, which gives algae-based biofuels the same tax incentives that cellulosic biofuels currently enjoy. Specifically, the bill would provide a $1.01 per gallon tax credit and offer 50 percent bonus depreciation for property used in the production of algae-based biofuels. In short, this legislation will level the playing field for algae, resulting in enhanced development and commercialization.

Recent technological advances have showcased the tremendous potential of algae as a renewable fuel source. Algae-based biofuels can be refined into gasoline, jet fuel and diesel. These fuels are renewable, have a low-carbon footprint, and can fit seamlessly into our existing energy infrastructure. Additionally, algae does not compete for arable land or potable water. Algae grows best in very sunny climates, making the desert an ideal place for production, and it utilizes saltwater, not freshwater, to grow. It also has a short-life cycle and high oil content.

Algae-based renewable fuels will play an important role in America's clean energy portfolio, and provide an answer to the question of how we will decrease our dependence on foreign oil and increase our domestic security. Again, I thank my colleague, Senator BILL NELSON, and I look forward to working with my colleagues in the Senate on this important piece of legislation.

By Mr. WARNER:

S. 1251. A bill to amend title XVIII of the Social Security Act to provide for advanced illness care management services for Medicare beneficiaries, and for other purposes; to the Committee on Finance.

Mr. WARNER. Mr. President, I rise today to introduce legislation to help seniors navigate through a complicated and often overwhelming health care delivery system. Because of the fragmented nature of our healthcare system, we often fail to provide patients, their families, and caregivers with the necessary tools, information, and support to age well and with dignity in the setting of their preference. I believe that if we provide patients with better information about advance care planning in non-crisis situations, they will make decisions for themselves and their families that result in better care and better quality of life.

Our health care system is in need of sweeping reforms that will not only provide broader coverage but will also increase value and efficient access to quality care. As we provide meaningful reforms for the healthcare system, we should take the opportunity to refine and enhance those parts of the Medicare system that work well for seniors.

Currently, Medicare beneficiaries with advanced illnesses have a good option in the Medicare hospice benefit to receive care, family support, and counseling during the last six months of life. For those who are ill or in need of advanced illness care, but are not eligible for the hospice benefit, there are very few options for counseling and services that would help them make informed choices about their care options. Often, they are left in the dark about their treatment alternatives and without the support they and their family members need to prepare and plan for the care they want and need. Frankly, it is unconscionable to leave it to families to resolve these extraordinarily difficult decisions, often in moments of crisis, without appropriate information, materials and supportive services. The Senior Navigation and Planning Act of 2009 will help seniors and their families navigate through an extremely complex system and will help them make informed medical decisions.

My legislation would provide access to an advanced illness care management benefit, increase the awareness of advance care planning through a national education campaign and clearinghouse, reduce legal hurdles to the enforcement of advance directives, create incentives for hospitals and physicians to get accredited and certified in palliative care, increase compliance with medical orders and discharge instructions, educate entities including faith-based organizations on advance care planning issues, and increase integration and coordination between the Medicare and Medicaid programs. Collectively, these initiatives will create a more accessible environment for seniors to receive the care they need, when they need it, in the setting they prefer.

Specifically, the advanced illness care management benefit would allow Medicare beneficiaries who have been diagnosed with a life expectancy of 18 months or less to have access to the guidance and expertise of a hospice team and receive services such as consultations on palliative care, advance care planning that is patient-centered, and counseling, respite, and care giving training for their family members. This new advanced illness care management benefit will provide seniors with the support they need to make informed decisions.

This initiative builds upon the efforts of the hospice community and the private sector. For example, United Health Group has created an Advanced Illness model in their benefit design and offers this program to the seniors they serve in Medicare Advantage and Special Needs Plans. They have found by providing access to the hospice and palliative care teams earlier, patients experience an increase in the quality of their life and duplicative or futile care is reduced. Aetna and Kaiser Permanente have also implemented these types of programs with similar results.

In addition to the impact a lack of advance care planning and access to supportive services has on a patient's quality of life, inadequate access to advance care planning services contributes to 27 percent of Medicare costs spent in the last year of life. Advanced illness, palliative, and hospice care have been shown to improve quality of care at a reduced cost. Specifically, studies demonstrate that if an additional 2 percent of hospitalized Medicare beneficiaries received palliative care, direct cost savings to the Medicare program would be $1.57 billion. Given health care costs are growing at an alarming rate and that seniors may not be getting the necessary information they need to make appropriate treatment decisions, we need to act now to provide them with access to advanced illness and advance care planning services.

I believe that rather than deny or withhold healthcare services, overall health reform should include a thoughtful process that informs patients, their families, and caregivers on how to navigate and think through decisions about when and how long to pursue treatments at the end-of-life. By doing this, we will provide a culture in which all of us will have the ability to age well, with dignity, in the setting of our choosing.

It is my hope that this legislation will be incorporated into the broader health care reform effort that is underway in the Finance and Health, Education, Labor, and Pensions Committees. I look forward to working with Chairmen BAUCUS and KENNEDY to implement these meaningful reforms so seniors have access to the information and services they need to receive the care they deserve.

By Mr. ROCKEFELLER (for himself, Mr. INOUYE, and Ms. CANTWELL):

S. 1252. A bill to promote ocean and human health and for other purposes; to the Committee on Commerce, Science, and Transportation.

Mr. ROCKEFELLER. Mr. President, oceans affect human health both directly and indirectly from the water quality at our beaches to the safety of seafood at U.S. markets; therefore, it is important to understand the relationship between environmental stressors, coastal conditions, climate change, and human health. Over the last several decades ocean and coastal waters have become channels for environmental threats to human health including infectious disease, harmful toxins from algae, and chemical pollutants from contact with contaminated seafood, polluted drinking water, and dirty beaches. Since the 1960s, scientists have realized that marine plants, animals, and microbes can also produce substances that benefit human health, such as anticancer, anti-inflammatory, and antibiotic medicines.

Through well designed research and monitoring programs, we can maximize the health benefits derived from the oceans, improve the safety of American seafood, reduce beach closures, and detect emerging threats to human health in a proactive rather than reactive manner.

In 2004, Congress enacted the Oceans and Human Health Act which authorized the National Oceanic and Atmospheric Administration, the National Science Foundation, and the National Institutes of Health to conduct research to improve understanding of the connection between the oceans and public health. Today, Senator INOUYE, Senator CANTWELL, and I are introducing the Oceans and Human Health Reauthorization Act of 2009.

This legislation would direct the President, working through the National Science and Technology Council, to coordinate a national research program to improve understanding of the role of the oceans, coasts and Great Lakes in human health and deliver information, products, and services to assist the nation in reducing public health risks, including those related to climate change, and enhancing health benefits from the ocean. It would establish the Oceans and Human Health Task Force that will include a number of federal agencies, such as the National Oceanic and Atmospheric Administration, the National Institutes of Health, the National Science Foundation, the National Institute for Environmental Health Science, and the Center for Disease Control. It would direct the Interagency Oceans and Human Health Task Force to develop an implementation plan that: establishes the goals and priorities for federal research that advance scientific

understanding of the connections between oceans and human health; provides information for the prediction, surveillance, and forecasting of marine-related public health problems, including those related to climate change; and uses the biological and chemical potentials of the oceans to develop new products for the prevention and treatment of diseases and to increase our understanding of the biological properties of ocean resources. The legislation would also reauthorize the National Oceanic and Atmospheric Administration's Oceans and Human Health Initiative and establish a Distinguished Scholars program for scientists to work with the National Oceanic and Atmospheric Administration on the oceans and human health initiative.

Importantly, this bill would recognize the effects of climate change on oceans and human health. The effects of climate change do not stop with sea level rise and increased water temperatures. Without physical and ecological boundaries, climate change causes a cascade of effects throughout ocean environments that can result in surprising impacts on ocean and human health. This reauthorization bill would include climate change and oceans and human health as a new research area.

Our oceans impact every American and they are a foundation of America's economy. The research and monitoring supported by this bill will help make sure we have healthy oceans where people can swim, fish, play, and eat seafood. It will also help us develop new blue jobs in marine natural products and lead to new discoveries in medicines to cure deadly diseases.

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

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

S. 1252

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Oceans and Human Health Reauthorization Act of 2009''.

SEC. 2. INTERAGENCY OCEANS AND HUMAN HEALTH RESEARCH PROGRAM.

(a) COORDINATION.—Subsection (a) of section 902 of the Oceans and Human Health Act (33 U.S.C. 3101) is amended by striking ''in human health.'' and inserting '', coasts, and Great Lakes in human health and deliver information, products, and services to assist the nation in reducing public health risks, including those related to climate change, and enhancing health benefits from the ocean.''.

(b) IMPLEMENTATION PLAN.—Subsection (b) of section 902 of the Oceans and Human Health Act (33 U.S.C. 3101) is amended—

(1) by amending the matter preceding paragraph (1) to read as follows:

''(b) IMPLEMENTATION PLAN.—Not later than 5 years after the date of the enactment of the Oceans and Human Health Reauthorization Act of 2009, an Interagency Oceans and Human Health Task Force or working group established by the National Science and Technology Council, through the Director of the Office of Science and Technology Policy, shall revise and update the 2007 'Interagency Oceans and Human Health Research Implementation Plan' and submit to the Congress the updated Plan. Nothing in this subsection is intended to duplicate or supersede the activities of the Inter-Agency Task Force on Harmful Algal Blooms and Hypoxia established under section 603 of the Harmful Algal Bloom and Hypoxia Research and Control Act of 1998 (Public Law 105–383; 16 U.S.C. 1451 note). The updated plan shall—'';

(2) in paragraph (1)—

(A) by inserting '', surveillance, and forecasting'' after ''prediction'';

(B) by inserting '', including problems related to climate change,'' after ''health problems'';

(C) by inserting ''and chemical'' after ''biological''; and

(D) by inserting ''products for the prevention and'' after ''new'';

(3) in paragraph (2), by striking ''and participation;'' and all that follows through the end and inserting ''participation in national and international research and outreach efforts, and outreach to the medical community and the public;'';

(4) in paragraph (3), by inserting '', including joint efforts,'' after ''departments'';

(5) in paragraph (4), by striking ''preventive'' and inserting ''preventing'';

(6) in paragraph (5), by inserting ''Resources'' after ''the Ocean'';

(7) in paragraph (6), by striking ''and'' at the end;

(8) by amending paragraph (7) to read as follows:

''(7) estimate funding needed for research, surveillance, education, and outreach activities to be conducted within or supported by Federal agencies and departments under the program.''; and

(9) by at the end the following:

''(8) build on, and complement, the research, surveillance, and outreach activities of the National Oceanic and Atmospheric Administration, the National Science Foundation, the National Institutes of Health, the Centers for Disease Control and Prevention, the National Institute of Environmental Health Sciences, and other departments and agencies.''.

(c) PROGRAM SCOPE.—Subsection (c) of section 902 of the Oceans and Human Health Act (33 U.S.C. 3101) is amended—

(1) by amending paragraph (1) to read as follows:

''(1) Interdisciplinary research among the ocean, atmospheric, and medical sciences, and coordinated research and activities to improve understanding of processes within the ocean that may affect human and marine animal health and to explore the potential contribution of marine organisms to medicine and research, including—

''(A) vector-, water-, and food-borne diseases of humans and marine organisms, including marine mammals, corals, and fish;

''(B) health effects for both humans and marine animals associated with harmful algal blooms and hypoxia (in collaboration with the Inter-Agency Task Force on Harmful Algal Blooms and Hypoxia);

''(C) health effects for humans and marine organisms associated with climate change impacts in ocean, coastal, and Great Lakes waters;

''(D) marine-derived pharmaceuticals and other natural products;

''(E) marine organisms and habitats as models for biomedical research and as indicators of human health and well being and marine environmental health;

''(F) marine environmental microbiology;

''(G) legacy and emerging chemicals of concern, including bioaccumulative and endocrine-disrupting chemical contaminants;

''(H) predictive models based on indicators of marine environmental health or public health threats; and

''(I) social, economic, and behavioral studies of relationships between the condition of oceans, coasts, and Great Lakes and human health and well-being.'';

(2) by amending paragraph (2) to read as follows:

''(2) Coordination with any appropriate interagency working group of the Joint Subcommittee on Ocean Science and Technology, or its successor body, through the National Science and Technology Council, to ensure that any integrated ocean and coastal observing system provides information necessary to monitor and reduce marine public health problems, including climate change information, health-related data on biological populations, and detection of toxins and contaminants in marine waters and seafood.''; and

(3) in paragraph (3)—

(A) in subparagraph (A), by striking ''genomics and proteomics'' and inserting ''genomics, proteomics, metabolomics, and other related sciences'';

(B) by amending subparagraph (C) to read as follows:

''(C) in situ, laboratory, and remote sensors—

''(i) to detect, quantify, and predict the presence, distribution, concentration, toxicity, or virulence of infectious microbes, harmful algae, toxins, and chemical contaminants in ocean, coastal, and Great Lakes waters, sediments, organisms, and seafood; and

''(ii) to identify new genetic resources for biomedical purposes;''; and

(C) in subparagraph (E), by striking ''equipment and technologies'' and inserting ''equipment, technologies, and methodologies''.

(d) BIENNIAL REPORT.—Subsection (d) of section 902 of the Oceans and Human Health Act (33 U.S.C. 3101) is amended—

(1) in the heading, by striking ''ANNUAL'' and inserting ''BIENNIAL'';

(2) in the material preceding paragraph (1)—

(A) by striking ''24 months after the date of enactment of this Act'' and inserting ''12 months after the date of the enactment of the Oceans and Human Health Reauthorization Act of 2009'';

(B) by striking ''each year an annual'' and inserting ''alternate years a biennial''; and

(C) by striking ''year,'' and inserting ''years,'';

(3) in paragraph (1), by striking ''year;'' and inserting ''years;'';

(4) in paragraph (4), by striking ''that preceding fiscal year;'' and inserting ''the preceding two fiscal years;'' and

(5) in paragraph (5), by inserting '', funding needs,'' after ''action''.

SEC. 3. NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION OCEANS AND HUMAN HEALTH INITIATIVE.

(a) ESTABLISHMENT.—Subsection (a) of section 903 of the Oceans and Human Health Act (33 U.S.C. 3102) is amended—

(1) in the matter preceding paragraph (1), by striking the second sentence, and inserting ''In carrying out this section, the Secretary shall consult with other Federal agencies and departments conducting integrated oceans and human health research and disease surveillance activities and research in related areas, including the National Science Foundation, the National Institutes of Health, the Centers for Disease Control and

Prevention, the National Institute of Environmental Health Sciences, and other agencies and departments.''; and

(2) in paragraph (2), by inserting ''external'' after ''an''.

(b) ADVISORY PANEL.—Subsection (b) of section 903 of the Oceans and Human Health Act (33 U.S.C. 3102) is amended—

(1) by striking ''is authorized to'' and inserting ''shall''; and

(2) by striking ''sciences.'' and inserting ''sciences, including public health practitioners.''.

(c) NATIONAL CENTERS.—Subsection (c) of section 903 of the Oceans and Human Health Act (33 U.S.C. 3102) is amended—

(1) in paragraph (1), by striking ''for''; and

(2) by amending paragraph (2) to read as follows:

''(2) The centers shall focus on—

''(A) areas related to agency missions, including use of marine organisms and habitats as indicators for marine environmental health, impacts of climate change on ocean health threats, ocean pollutants, marine toxins and pathogens, harmful algal blooms, hypoxia, seafood safety and quality, identification of potential marine products, and biology and pathobiology of marine mammals, corals, and other marine organisms; and

''(B) supporting disciplines including marine genomics, marine environmental microbiology, ecological chemistry, and conservation medicine.''.

(d) EXTRAMURAL RESEARCH GRANTS.—Subsection (d) of section 903 of the Oceans and Human Health Act (33 U.S.C. 3102) is amended by adding at the end the following:

''(3) Grants under this subsection shall support research to improve understanding of processes within the ocean that may affect human and marine animal health and to explore the potential contribution of marine organisms to medicine and research, including—

''(A) vector-, water-, and food-borne diseases of humans and marine organisms, including marine mammals, corals, and fish;

''(B) health effects for humans and marine organisms associated with climate change impacts in ocean, coastal, and Great Lakes waters;

''(C) marine-derived pharmaceuticals and other natural products;

''(D) marine organisms and habitats as models for biomedical research and as indicators of human health and well being and marine environmental health;

''(E) marine environmental microbiology;

''(F) legacy and emerging chemicals of concern, including bioaccumulative and endocrine-disrupting chemical contaminants;

''(G) predictive models based on indicators of marine environmental health or public health threats;

''(H) cataloging and interpreting microbes and understanding microbial functions in ecosystems and impacts on human and marine health; and

''(I) social, economic, and behavioral studies of relationships between the condition of oceans, coasts, and Great Lakes, and human health and well-being.''.

(e) DISTINGUISHED SCHOLARS; COOPERATIVE AGREEMENTS.—Section 903 of the Oceans and Human Health Act (33 U.S.C. 3102) is amended by adding at the end the following:

''(f) DISTINGUISHED SCHOLARS.—The Secretary of Commerce is authorized to establish a competitive program to recognize highly distinguished external scientists in any area of oceans and human health research and to involve those scientists in collaborative work with the Oceans and Human Health Initiative of the National Oceanic and Atmospheric Administration.

''(g) COOPERATIVE AGREEMENTS.—The Secretary of Commerce may execute and perform such contracts, leases, grants, or cooperative agreements as may be necessary to carry out this section.''.

SEC. 4. PUBLIC INFORMATION AND OUTREACH.

(a) IN GENERAL.—Subsection (a) of section 904 of the Oceans and Human Health Act (33 U.S.C. 3103) is amended by striking ''program,'' and inserting ''and institutions of higher education,''.

(b) REPORT.—Subsection (b) of section 904 of the Oceans and Human Health Act (33 U.S.C. 3103) is amended to read as follows:

''(b) REPORT.—

''(1) REQUIREMENT.—The Secretary of Commerce shall submit to Congress a biennial report reviewing the results of the research, assessments, and findings developed under the Oceans and Human Health Initiative of the National Oceanic and Atmospheric Administration. Each such report shall—

''(A) describe the projects, products, and programs funded under the Initiative;

''(B) describe the work of the Advisory Committee and the manner in which the program is meeting development and implementation recommendations for the program; and

''(C) include recommendations for improving or expanding the program.

''(2) COMBINED REPORTS.—Each report required by paragraph (1) may be combined with the National Ocean and Atmospheric Administration's input to the biennial interagency report required by section 902(d).''.

SEC. 5. AUTHORIZATION OF APPROPRIATIONS.

Subsection (a) of section 905 of the Oceans and Human Health Act (33 U.S.C. 3104) is amended—

(1) by striking ''2005 through 2008'' and inserting ''2010 through 2014''; and

(2) by inserting '', distinguished scholar,'' after ''grant''.

By Mr. CORKER (for himself, Mr. NELSON of Florida, Mrs. SHAHEEN, Ms. SNOWE, Mr. ISAKSON, and Mr. WICKER):

S. 1253. A bill to address reimbursement of certain costs to automobile dealers; to the Committee on the Judiciary.

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

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

S. 1253

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Automobile Dealers Assistance Act of 2009''.

SEC. 2. REIMBURSEMENT OF AUTOMOBILE DISTRIBUTORS.

(a) IN GENERAL.—Notwithstanding any other provision of law, any funds provided by the United States Government, or any agency, department, or subdivision thereof, to an automobile manufacturer or a distributor thereof as credit, loans, financing, advances, or by any other agreement in connection with such automobile manufacturer's or distributor's proceeding as a debtor under title 11, United States Code, shall be conditioned upon use of such funds to fully reimburse all dealers of such automobile manufacturer or manufacturer's distributor for—

(1) the cost incurred by such dealers during the 9-month period preceding the date on which the proceeding under title 11, United States Code, by or against the automobile manufacturer or manufacturer's distributor is commenced, in acquisition of all parts and inventory in the dealer's possession on on the same basis as if the dealers were terminating pursuant to existing franchise agreements or dealer agreements; and

(2) all other obligations owed by such automobile manufacturer or manufacturer's distributor under any other agreement between the dealers and the automobile manufacturer or manufacturer's distributor arising during that 9-month period, including, without limitation, franchise agreement or dealer agreements.

(b) INCLUSION IN TERMS.—Any note, security agreement, loan agreement, or other agreement between an automobile manufacturer or manufacturer's distributor and the Government (or any agency, department, or subdivision thereof) shall expressly provide for the use of such funds as required by this section. A bankruptcy court may not authorize the automobile manufacturer or manufacturer's distributor to obtain credit under section 364 of title 11, United States Code, unless the credit agreement or agreements expressly provided for the use of funds as required by this section.

(c) EFFECTIVENESS OF REJECTION.—Notwithstanding any other provision of law, any rejection by an automobile manufacturer or manufacturer's distributor that is a debtor in a proceeding under title 11, United States Code, of a franchise agreement or dealer agreement pursuant to section 365 of that title, shall not be effective until at least 180 days after the date on which such rejection is otherwise approved by a bankruptcy court.

By Ms. CANTWELL (for herself and Mr. KOHL):

S. 1256. A bill to amend title XIX of the Social Security Act to establish financial incentives for States to expand the provision of long-term services and supports to Medicaid beneficiaries who do not reside in an institution, and for other purposes; to the Committee on Finance.

Ms. CANTWELL. Mr. President, I rise today to introduce the Home and Community Balanced Incentives Act of 2009, together with my colleague from Wisconsin, Senator KOHL. As we in the Senate embark on reforming America's health care system, we cannot forget those who are dependent on daily care in order to survive: those in long-term care. Long-term care provides health care and daily living services to the elderly and disabled population, providing them with the ability to live happy, productive lives that age, illness and disability would otherwise prevent.

In 2007, the U.S. spent close to $109 billion on long term institutional care services under the Medicaid program; in my state of Washington it was approximately $2 billion. This amount represents more than 30 percent of all Medicaid payments, and is a number we can easily reduce. This legislation seeks to rebalance how states handle long term care by providing the tools they need to shift people out of expensive institutional care facilities and into home and community based care, where they can remain vibrant, active members of their community.

As Dorothy from the Wizard of Oz once said: There is no place like home. I could not agree more, which is why I believe in providing individuals and

families with the option to remain in their home, where studies have shown the overall quality of life is far superior to that in an institutional facility. Additionally, home and community based care is far more cost efficient than institutional care; by diverting just 5 percent of the long term care community away from institutional care and into home and community based services, we would see a net savings of more than $10 billion dollars over five years. In a time when rising health care spending plays such a pivotal role in the health of the overall economy, these savings represent a giant step towards reining in unnecessary health care spending.

The Home and Community Balanced Incentives Act would achieve the goal of transitioning to home and community based services by offering states modest increases to their federal medical assistance payment, FMAP, for home and community based services. States would have to use these increases to develop the programs needed to provide effective home and community based services. These services will reduce barriers that currently prohibit people from accessing home and community based services.

This bill succeeds in not only saving the Medicaid program a significant amount of money, but it will empower families to make informed decisions about their long term care needs.

Specifically, this bill would: improve case management to help people remain in their homes and communities and out of nursing homes; provide consumer empowerment helping to put individuals in charge of their care; provide a coordinated transition structure for those wishing to leave institutional care and return to their homes and communities; create a clear and well coordinated system for providing long term care information and support; improve methodology for determining eligibility and tracking provider data on services and quality outcomes.

Senator KOHL and I are excited to introduce this important legislation and to begin working with our colleagues on improving the long term care system in America.

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

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

S. 1256

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

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Home and Community Balanced Incentives Act of 2009''.

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

TITLE I—BALANCING INCENTIVES

SEC. 101. ENHANCED FMAP FOR EXPANDING THE PROVISION OF NON-INSTITUTIONALLY-BASED LONG-TERM SERVICES AND SUPPORTS.

(a) ENHANCED FMAP TO ENCOURAGE EXPANSION.—Section 1905 of the Social Security Act (42 U.S.C. 1396d) is amended—

(1) in the first sentence of subsection (b)—

(A) by striking '', and (4)'' and inserting '', (4)''; and

(B) by inserting before the period the following: '', and (5) in the case of a balancing incentive payment State, as defined in subsection (y)(1), that meets the conditions described in subsection (y)(2), the Federal medical assistance percentage shall be increased by the applicable number of percentage points determined under subsection (y)(3) for the State with respect to medical assistance described in subsection (y)(4)''; and

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

''(y) STATE BALANCING INCENTIVE PAYMENTS PROGRAM.—For purposes of clause (5) of the first sentence of subsection (b):

''(1) BALANCING INCENTIVE PAYMENT STATE.—A balancing incentive payment State is a State—

''(A) in which less than 50 percent of the total expenditures for medical assistance for fiscal year 2009 for long-term services and supports (as defined by the Secretary, subject to paragraph (5)) are for non-institutionally-based long-term services and supports described in paragraph (5)(B);

''(B) that submits an application and meets the conditions described in paragraph (2); and

''(C) that is selected by the Secretary to participate in the State balancing incentive payment program established under this subsection.

''(2) CONDITIONS.—The conditions described in this paragraph are the following:

''(A) APPLICATION.—The State submits an application to the Secretary that includes the following:

''(i) A description of the availability of non-institutionally-based long-term services and supports described in paragraph (5)(B) available (for fiscal years beginning with fiscal year 2009).

''(ii) A description of eligibility requirements for receipt of such services.

''(iii) A projection of the number of additional individuals that the State expects to provide with such services to during the 5-fiscal year period that begins with fiscal year 2011.

''(iv) An assurance of the State's commitment to a consumer-directed long-term services and supports system that values quality of life in addition to quality of care and in which beneficiaries are empowered to choose providers and direct their own care as much as possible.

''(v) A proposed budget that details the State's plan to expand and diversify medical assistance for non-institutionally-based long-term services and supports described in paragraph (5)(B) during such 5-fiscal year period, and that includes—

''(I) a description of the new or expanded offerings of such services that the State will provide; and

''(II) the projected costs of the services identified in subclause (I).

''(vi) A description of how the State intends to achieve the target spending percentage applicable to the State under subparagraph (B).

''(vii) An assurance that the State will not use Federal funds, revenues described in section 1903(w)(1), or revenues obtained through the imposition of beneficiary cost-sharing for medical assistance for non-institutionally-based long-term services and supports described in paragraph (5)(B) for the non-federal share of expenditures for medical assistance described in paragraph (4).

''(B) TARGET SPENDING PERCENTAGES.—

''(i) In the case of a balancing incentive payment State in which less than 25 percent of the total expenditures for home and community-based services under the State plan and the various waiver authorities for fiscal year 2009 are for such services, the target spending percentage for the State to achieve by not later than October 1, 2015, is that 25 percent of the total expenditures for home and community-based services under the State plan and the various waiver authorities are for such services.

''(ii) In the case of any other balancing incentive payment State, the target spending percentage for the State to achieve by not later than October 1, 2015, is that 50 percent of the total expenditures for home and community-based services under the State plan and the various waiver authorities are for such services.

''(C) MAINTENANCE OF ELIGIBILITY REQUIREMENTS.—The State does not apply eligibility standards, methodologies, or procedures for determining eligibility for medical assistance for non-institutionally-based long-term services and supports described in paragraph (5)(B)) that are more restrictive than the eligibility standards, methodologies, or procedures in effect for such purposes on December 31, 2010.

''(D) USE OF ADDITIONAL FUNDS.—The State agrees to use the additional Federal funds paid to the State as a result of this subsection only for purposes of providing new or expanded offerings of non-institutionally-based long-term services and supports described in paragraph (5)(B) (including expansion through offering such services to increased numbers of beneficiaries of medical assistance under this title).

''(E) STRUCTURAL CHANGES.—The State agrees to make, not later than the end of the 6-month period that begins on the date the State submits and application under this paragraph, such changes to the administration of the State plan (and, if applicable, to waivers approved for the State that involve the provision of long-term care services and supports) as the Secretary determines, by regulation or otherwise, are essential to achieving an improved balance between the provision of non-institutionally-based long-term services and supports described in paragraph (5)(B) and other long-term services and supports, and which shall include the following:

''(i) 'NO WRONG DOOR'—SINGLE ENTRY POINT SYSTEM.—Development of a statewide system to enable consumers to access all long-term

services and supports through an agency, organization, coordinated network, or portal, in accordance with such standards as the State shall establish and that—

''(I) shall require such agency, organization, network, or portal to provide—

''(aa) consumers with information regarding the availability of such services, how to apply for such services, and other referral services; and

''(bb) information regarding, and make recommendations for, providers of such services; and

''(II) may, at State option, permit such agency, organization, network, or portal to—

''(aa) determine financial and functional eligibility for such services and supports; and

''(bb) provide or refer eligible individuals to services and supports otherwise available in the community (under programs other than the State program under this title), such as housing, job training, and transportation.

''(ii) PRESUMPTIVE ELIGIBILITY.—At the option of the State, provision of a 60-day period of presumptive eligibility for medical assistance for non-institutionally-based long-term services and supports described in paragraph (5)(B) for any individual whom the State has reason to believe will qualify for such medical assistance (provided that any expenditures for such medical assistance during such period are disregarded for purposes of determining the rate of erroneous excess payments for medical assistance under section 1903(u)(1)(D)).

''(iii) CASE MANAGEMENT.—Development, in accordance with guidance from the Secretary, of conflict-free case management services to—

''(I) address transitioning from receipt of institutionally-based long-term services and supports described in paragraph (5)(A) to receipt of non-institutionally-based long-term services and supports described in paragraph (5)(B); and

''(II) in conjunction with the beneficiary, assess the beneficiary's needs and , if appropriate, the needs of family caregivers for the beneficiary, and develop a service plan, arrange for services and supports, support the beneficiary (and, if appropriate, the caregivers) in directing the provision of services and supports, for the beneficiary, and conduct ongoing monitoring to assure that services and supports are delivered to meet the beneficiary's needs and achieve intended outcomes.

''(iv) CORE STANDARDIZED ASSESSMENT INSTRUMENTS.—Development of core standardized assessment instruments for determining eligibility for non-institutionally-based long-term services and supports described in paragraph (5)(B), which shall be used in a uniform manner throughout the State, to—

''(I) assess a beneficiary's eligibility and functional level in terms of relevant areas that may include medical, cognitive, and behavioral status, as well as daily living skills, and vocational and communication skills;

''(II) based on the assessment conducted under subclause (I), determine a beneficiary's needs for training, support services, medical care, transportation, and other services, and develop an individual service plan to address such needs;

''(III) conduct ongoing monitoring based on the service plan; and

''(IV) require reporting of collect data for purposes of comparison among different service models.

''(F) DATA COLLECTION.—Collecting from providers of services and through such other means as the State determines appropriate the following data:

''(i) SERVICES DATA.—Services data from providers of non-institutionally-based long-term services and supports described in paragraph (5)(B) on a per-beneficiary basis and in accordance with such standardized coding procedures as the State shall establish in consultation with the Secretary.

''(ii) QUALITY DATA.—Quality data on a selected set of core quality measures agreed upon by the Secretary and the State that are linked to population-specific outcomes measures and accessible to providers.

''(iii) OUTCOMES MEASURES.—Outcomes measures data on a selected set of core population-specific outcomes measures agreed upon by the Secretary and the State that are accessible to providers and include—

''(I) measures of beneficiary and family caregiver experience with providers;

''(II) measures of beneficiary and family caregiver satisfaction with services; and

''(III) measures for achieving desired outcomes appropriate to a specific beneficiary, including employment, participation in community life, health stability, and prevention of loss in function.

''(3) APPLICABLE NUMBER OF PERCENTAGE POINTS INCREASE IN FMAP.—The applicable number of percentage points are—

''(A) in the case of a balancing incentive payment State subject to the target spending percentage described in paragraph (2)(B)(i), 5 percentage points; and

''(B) in the case of any other balancing incentive payment State, 2 percentage points.

''(4) ELIGIBLE MEDICAL ASSISTANCE EXPENDITURES.—

''(A) IN GENERAL.—Subject to subparagraph (B), medical assistance described in this paragraph is medical assistance for non-institutionally-based long-term services and supports described in paragraph (5)(B) that is provided during the period that begins on October 1, 2011, and ends on September 30, 2015.

''(B) LIMITATION ON PAYMENTS.—In no case may the aggregate amount of payments made by the Secretary to balancing incentive payment States under this subsection during the period described in subparagraph (A), or to a State to which paragraph (6) of the first sentence of subsection (b) applies, exceed $3,000,000,000.

''(5) LONG-TERM SERVICES AND SUPPORTS DEFINED.—In this subsection, the term 'long-term services and supports' has the meaning given that term by Secretary and shall include the following:

''(A) INSTITUTIONALLY-BASED LONG-TERM SERVICES AND SUPPORTS.—Services provided in an institution, including the following:

''(i) Nursing facility services.

''(ii) Services in an intermediate care facility for the mentally retarded described in subsection (a)(15).

''(B) NON-INSTITUTIONALLY-BASED LONG-TERM SERVICES AND SUPPORTS.—Services not provided in an institution, including the following:

''(i) Home and community-based services provided under subsection (c), (d), or (i), of section 1915 or under a waiver under section 1115.

''(ii) Home health care services.

''(iii) Personal care services.

''(iv) Services described in subsection (a)(26) (relating to PACE program services).

''(v) Self-directed personal assistance services described in section 1915(j)''.

(b) ENHANCED FMAP FOR CERTAIN STATES TO MAINTAIN THE PROVISION OF HOME AND COMMUNITY-BASED SERVICES.—The first sentence of section 1905(b) of such Act (42 U.S.C. 1396d (b)), as amended by subsection (a), is amended—

(1) by striking '', and (5)'' and inserting '', (5)''; and

(2) by inserting before the period the following: '', and (6) in the case of a State in which at least 50 percent of the total expenditures for medical assistance for fiscal year 2009 for long-term services and supports (as defined by the Secretary for purposes of subsection (y)) are for non-institutionally-based long-term services and supports described in subsection (y)(5)(B), and which satisfies the requirements of subparagraphs (A) (other than clauses (iii), (v), and (vi)), (C), and (F) of subsection (y)(2), and has implemented the structural changes described in each clause of subparagraph (E) of that subsection, the Federal medical assistance percentage shall be increased by 1 percentage point with respect to medical assistance described in subparagraph (A) of subsection (y)(4) (but subject to the limitation described in subparagraph (B) of that subsection)''.

(c) GRANTS TO SUPPORT STRUCTURAL CHANGES.—

(1) IN GENERAL.—The Secretary of Health and Human Services shall award grants to States for the following purposes:

(A) To support the development of common national set of coding methodologies and databases related to the provision of non-institutionally-based long-term services and supports described in paragraph (5)(B) of section 1905(y) of the Social Security Act (as added by subsection (a)).

(B) To make structural changes described in paragraph (2)(E) of section 1905(y) to the State Medicaid program.

(2) PRIORITY.—In awarding grants for the purpose described in paragraph (1)(A), the Secretary of Health and Human Services shall give priority to States in which at least 50 percent of the total expenditures for medical assistance under the State Medicaid program for fiscal year 2009 for long-term services and supports, as defined by the Secretary for purposes of section 1905(y) of the Social Security Act, are for non-institutionally-based long-term services and supports described in paragraph (5)(B) of such section.

(3) COLLABORATION.—States awarded a grant for the purpose described in paragraph (1)(A) shall collaborate with other States, the National Governor's Association, the National Conference of State Legislatures, the National Association of State Medicaid Directors, the National Association of State Directors of Developmental Disabilities, and other appropriate organizations in developing specifications for a common national set of coding methodologies and databases.

(4) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this subsection, such sums as may be necessary for each of fiscal years 2010 through 2012.

(d) AUTHORITY FOR INDIVIDUALIZED BUDGETS UNDER WAIVERS TO PROVIDE HOME AND COMMUNITY-BASED SERVICES.—In the case of any waiver to provide home and community-based services under subsection (c) or (d) of section 1915 of the Social Security Act (42 U.S.C. 1396n) or section 1115 of such Act (42 U.S.C. 1315), that is approved or renewed after the date of enactment of this Act, the Secretary of Health and Human Services shall permit a State to establish individualized budgets that identify the dollar value of the services and supports to be provided to an individual under the waiver.

(e) OVERSIGHT AND ASSESSMENT.—

(1) DEVELOPMENT OF STANDARDIZED REPORTING REQUIREMENTS.—

(A) STANDARDIZATION OF DATA AND OUTCOME MEASURES.—The Secretary of Health and Human Services shall consult with States and the National Governor's Association, the National Conference of State Legislatures, the National Association of State Medicaid Directors, the National Association of State Directors of Developmental Disabilities, and other appropriate organizations to develop specifications for standardization of—

(i) reporting of assessment data for long-term services and supports (as defined by the

Secretary for purposes of section 1905(y)(5) of the Social Security Act) for each population served, including information standardized for purposes of certified EHR technology (as defined in section 1903(t)(3)(A) of the Social Security Act (42 U.S.C. 1396b(t)(3)(A)) and under other electronic medical records initiatives; and

(ii) outcomes measures that track assessment processes for long-term services and supports (as so defined) for each such population that maintain and enhance individual function, independence, and stability.

(2) ADMINISTRATION OF HOME AND COMMUNITY SERVICES.—The Secretary of Health and Human Services shall promulgate regulations to ensure that all States develop service systems that are designed to—

(A) allocate resources for services in a manner that is responsive to the changing needs and choices of beneficiaries receiving non-institutionally-based long-term services and supports described in paragraph (5)(B) of section 1905(y) of the Social Security Act (as added by subsection (a)) (including such services and supports that are provided under programs other the State Medicaid program), and that provides strategies for beneficiaries receiving such services to maximize their independence;

(B) provide the support and coordination needed for a beneficiary in need of such services (and their family caregivers or representative, if applicable) to design an individualized, self-directed, community-supported life; and

(C) improve coordination among all providers of such services under federally and State-funded programs in order to—

(i) achieve a more consistent administration of policies and procedures across programs in relation to the provision of such services; and

(ii) oversee and monitor all service system functions to assure—

(I) coordination of, and effectiveness of, eligibility determinations and individual assessments; and

(II) development and service monitoring of a complaint system, a management system, a system to qualify and monitor providers, and systems for role-setting and individual budget determinations.

(3) MONITORING.—The Secretary of Health and Human Services shall assess on an ongoing basis and based on measures specified by the Agency for Healthcare Research and Quality, the safety and quality of non-institutionally-based long-term services and supports described in paragraph (5)(B) of section 1905(y) of that Act provided to beneficiaries of such services and supports and the outcomes with regard to such beneficiaries' experiences with such services. Such oversight shall include examination of—

(A) the consistency, or lack thereof, of such services in care plans as compared to those services that were actually delivered; and

(B) the length of time between when a beneficiary was assessed for such services, when the care plan was completed, and when the beneficiary started receiving such services.

(4) GAO STUDY AND REPORT.—The Comptroller General of the United States shall study the longitudinal costs of Medicaid beneficiaries receiving long-term services and supports (as defined by the Secretary for purposes of section 1905(y)(5) of the Social Security Act) over 5-year periods across various programs, including the non-institutionally-based long-term services and supports described in paragraph (5)(B) of such section, PACE program services under section 1894 of the Social Security Act (42 U.S.C. 1395eee, 1396u–4), and services provided under specialized MA plans for special needs individuals under part C of title XVIII of the Social Security Act.

TITLE II—STRENGTHENING THE MEDICAID HOME AND COMMUNITY-BASED STATE PLAN AMENDMENT OPTION

SEC. 201. REMOVAL OF BARRIERS TO PROVIDING HOME AND COMMUNITY-BASED SERVICES UNDER STATE PLAN AMENDMENT OPTION FOR INDIVIDUALS IN NEED.

(a) PARITY WITH INCOME ELIGIBILITY STANDARD FOR INSTITUTIONALIZED INDIVIDUALS.—Paragraph (1) of section 1915(i) of the Social Security Act (42 U.S.C. 1396n(i)) is amended by striking ''150 percent of the poverty line (as defined in section 2110(c)(5))'' and inserting ''300 percent of the supplemental security income benefit rate established by section 1611(b)(1)''.

(b) ADDITIONAL STATE OPTIONS.—Section 1915(i) of the Social Security Act (42 U.S.C. 1396n(i)) is amended by adding at the end the following new paragraphs:

''(6) STATE OPTION TO PROVIDE HOME AND COMMUNITY-BASED SERVICES TO INDIVIDUALS ELIGIBLE FOR SERVICES UNDER A WAIVER.—

''(A) IN GENERAL.—A State that provides home and community-based services in accordance with this subsection to individuals who satisfy the needs-based criteria for the receipt of such services established under paragraph (1)(A) may, in addition to continuing to provide such services to such individuals, elect to provide home and community-based services in accordance with the requirements of this paragraph to individuals who are eligible for home and community-based services under a waiver approved for the State under subsection (c), (d), or (e) or under section 1115 to provide such services, but only for those individuals whose income does not exceed 300 percent of the supplemental security income benefit rate established by section 1611(b)(1).

''(B) APPLICATION OF SAME REQUIREMENTS FOR INDIVIDUALS SATISFYING NEEDS-BASED CRITERIA.—Subject to subparagraph (C), a State shall provide home and community-based services to individuals under this paragraph in the same manner and subject to the same requirements as apply under the other paragraphs of this subsection to the provision of home and community-based services to individuals who satisfy the needs-based criteria established under paragraph (1)(A).

''(C) AUTHORITY TO OFFER DIFFERENT TYPE, AMOUNT, DURATION, OR SCOPE OF HOME AND COMMUNITY-BASED SERVICES.—A State may offer home and community-based services to individuals under this paragraph that differ in type, amount, duration, or scope from the home and community-based services offered for individuals who satisfy the needs-based criteria established under paragraph (1)(A), so long as such services are within the scope of services described in paragraph (4)(B) of subsection (c) for which the Secretary has the authority to approve a waiver and do not include room or board.

''(7) STATE OPTION TO OFFER HOME AND COMMUNITY-BASED SERVICES TO SPECIFIC, TARGETED POPULATIONS.—

''(A) IN GENERAL.—A State may elect in a State plan amendment under this subsection to target the provision of home and community-based services under this subsection to specific populations and to differ the type, amount, duration, or scope of such services to such specific populations.

''(B) 5-YEAR TERM.—

''(i) IN GENERAL.—An election by a State under this paragraph shall be for a period of 5 years.

''(ii) PHASE-IN OF SERVICES AND ELIGIBILITY PERMITTED DURING INITIAL 5-YEAR PERIOD.—A State making an election under this paragraph may, during the first 5-year period for which the election is made, phase-in the enrollment of eligible individuals, or the provision of services to such individuals, or both, so long as all eligible individuals in the State for such services are enrolled, and all such services are provided, before the end of the initial 5-year period.

''(C) RENEWAL.—An election by a State under this paragraph may be renewed for additional 5-year terms if the Secretary determines, prior to beginning of each such renewal period, that the State has—

''(i) adhered to the requirements of this subsection and paragraph in providing services under such an election; and

''(ii) met the State's objectives with respect to quality improvement and beneficiary outcomes.''.

(c) REMOVAL OF LIMITATION ON SCOPE OF SERVICES.—Paragraph (1) of section 1915(i) of the Social Security Act (42 U.S.C. 1396n(i)), as amended by subsection (a), is amended by striking ''or such other services requested by the State as the Secretary may approve''.

(d) OPTIONAL ELIGIBILITY CATEGORY TO PROVIDE FULL MEDICAID BENEFITS TO INDIVIDUALS RECEIVING HOME AND COMMUNITY-BASED SERVICES UNDER A STATE PLAN AMENDMENT.—

(1) IN GENERAL.—Section 1902(a)(10)(A)(ii) of the Social Security Act (42 U.S.C. 1396a(a)(10)(A)(ii)) is amended—

(A) in subclause (XVIII), by striking ''or'' at the end;

(B) in subclause (XIX), by adding ''or'' at the end; and

(C) by inserting after subclause (XIX), the following new subclause:

''(XX) who are eligible for home and community-based services under needs-based criteria established under paragraph (1)(A) of section 1915(i), or who are eligible for home and community-based services under paragraph (6) of such section, and who will receive home and community-based services pursuant to a State plan amendment under such subsection;''.

(2) CONFORMING AMENDMENTS.—

(A) Section 1903(f)(4) of the Social Security Act (42 U.S.C. 1396b(f)(4)) is amended in the matter preceding subparagraph (A), by inserting ''1902(a)(10)(A)(ii)(XX),'' after ''1902(a)(10)(A)(ii)(XIX),''.

(B) Section 1905(a) of the Social Security Act (42 U.S.C. 1396d(a)) is amended in the matter preceding paragraph (1)—

(i) in clause (xii), by striking ''or'' at the end;

(ii) in clause (xiii), by adding ''or'' at the end; and

(iii) by inserting after clause (xiii) the following new clause:

''(xiv) individuals who are eligible for home and community-based services under needs-based criteria established under paragraph (1)(A) of section 1915(i), or who are eligible for home and community-based services under paragraph (6) of such section, and who will receive home and community-based services pursuant to a State plan amendment under such subsection,''.

(e) ELIMINATION OF OPTION TO LIMIT NUMBER OF ELIGIBLE INDIVIDUALS OR LENGTH OF PERIOD FOR GRANDFATHERED INDIVIDUALS IF ELIGIBILITY CRITERIA IS MODIFIED.—Paragraph (1) of section 1915(i) of such Act (42 U.S.C. 1396n(i)) is amended—

(1) by striking subparagraph (C) and inserting the following:

''(C) PROJECTION OF NUMBER OF INDIVIDUALS TO BE PROVIDED HOME AND COMMUNITY-BASED SERVICES.—The State submits to the Secretary, in such form and manner, and upon such frequency as the Secretary shall specify, the projected number of individuals to be provided home and community-based services.''; and

(2) in subclause (II) of subparagraph (D)(ii), by striking ''to be eligible for such services

for a period of at least 12 months beginning on the date the individual first received medical assistance for such services'' and inserting ''to continue to be eligible for such services after the effective date of the modification and until such time as the individual no longer meets the standard for receipt of such services under such pre-modified criteria''.

(f) ELIMINATION OF OPTION TO WAIVE STATEWIDENESS; ADDITION OF OPTION TO WAIVE COMPARABILITY.—Paragraph (3) of section 1915(i) of such Act (42 U.S.C. 1396n(3)) is amended by striking ''1902(a)(1) (relating to statewideness)'' and inserting ''1902(a)(10)(B) (relating to comparability''.

(g) EFFECTIVE DATE.—The amendments made by this section take effect on the first day of the first fiscal year quarter that begins after the date of enactment of this Act.

SEC. 202. MANDATORY APPLICATION OF SPOUSAL IMPOVERISHMENT PROTECTIONS TO RECIPIENTS OF HOME AND COMMUNITY-BASED SERVICES.

(a) IN GENERAL.—Section 1924(h)(1)(A) of the Social Security Act (42 U.S.C. 1396r–5(h)(1)(A)) is amended by striking ''(at the option of the State) is described in section 1902(a)(10)(A)(ii)(VI)'' and inserting ''is eligible for medical assistance for home and community-based services under subsection (c), (d), (e), or (i) of section 1915''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) takes effect on October 1, 2009.

SEC. 203. STATE AUTHORITY TO ELECT TO EXCLUDE UP TO 6 MONTHS OF AVERAGE COST OF NURSING FACILITY SERVICES FROM ASSETS OR RESOURCES FOR PURPOSES OF ELIGIBILITY FOR HOME AND COMMUNITY-BASED SERVICES.

(a) IN GENERAL.—Section 1917 of the Social Security Act (42 U.S.C. 1396p) is amended by adding at the end the following new subsection:

''(i) STATE AUTHORITY TO EXCLUDE UP TO 6 MONTHS OF AVERAGE COST OF NURSING FACILITY SERVICES FROM HOME AND COMMUNITY-BASED SERVICES ELIGIBILITY DETERMINATIONS.—Nothing in this section or any other provision of this title, shall be construed as prohibiting a State from excluding from any determination of an individual's assets or resources for purposes of determining the eligibility of the individual for medical assistance for home and community-based services under subsection (c), (d), (e), or (i) of section 1915 (if a State imposes an limitation on assets or resources for purposes of eligibility for such services), an amount equal to the product of the amount applicable under subsection (c)(1)(E)(ii)(II) (at the time such determination is made) and such number, not to exceed 6, as the State may elect.''.

(b) RULE OF CONSTRUCTION.—Nothing in the amendment made by subsection (a) shall be construed as affecting a State's option to apply less restrictive methodologies under section 1902(r)(2) for purposes of determining income and resource eligibility for individuals specified in that section.

TITLE III—COORDINATION OF HOME AND COMMUNITY-BASED WAIVERS

SEC. 301. STREAMLINED PROCESS FOR COMBINED WAIVERS UNDER SUBSECTIONS (B) AND (C) OF SECTION 1915.

Not later than 90 days after the date of enactment of this Act, the Secretary of Health and Human Services shall create a template to streamline the process of approving, monitoring, evaluating, and renewing State proposals to conduct a program that combines the waiver authority provided under subsections (b) and (c) of section 1915 of the Social Security Act (42 U.S.C. 1396n) into a single program under which the State provides home and community-based services to individuals based on individualized assessments and care plans (in this section referred to as the ''combined waivers program''). The template required under this section shall provide for the following:

(1) A standard 5-year term for conducting a combined waivers program.

(2) Harmonization of any requirements under subsections (b) and (c) of such section that overlap.

(3) An option for States to elect, during the first 5-year term for which the combined waivers program is approved to phase-in the enrollment of eligible individuals, or the provision of services to such individuals, or both, so long as all eligible individuals in the State for such services are enrolled, and all such services are provided, before the end of the initial 5-year period.

(4) Examination by the Secretary, prior to each renewal of a combined waivers program, of how well the State has—

(A) adhered to the combined waivers program requirements; and

(B) performed in meeting the State's objectives for the combined waivers program, including with respect to quality improvement and beneficiary outcomes.

By Ms. CANTWELL (for herself and Ms. STABENOW):

S. 1257. A bill to amend the Social Security Act to build on the aging network to establish long-term services and supports through single-entry point systems, evidence based disease prevention and health promotion programs, and enhanced nursing home diversion programs; to the Committee on Finance.

Ms. CANTWELL. Mr. President, I rise today to introduce Project 2020: Building on the Promise of Home and Community-Based Services Act with my colleague from Michigan, Senator STABENOW. By the year 2020, almost 1 in 6 Americans will be over the age of 65 and the population of people over the age of 85, the fastest growing segment of the population, will double. Our current long term care financing structure is unsustainable as the population in need of such services rapidly increases. As such, we must turn our focus to reforming the long term care system to provide the best care available to this vulnerable population.

The average cost of a nursing home in this country is $70,000 a year, making this an unrealistic option for most Americans. In fact, most people who end up in a nursing home last just six months before they have spent so much they become poor enough to qualify for Medicaid. This situation is expensive for consumers, for states, and for the federal government. Fortunately, there is a clear answer. It costs Medicaid one third as much to provide someone with home and community based care as it would cost to care for them in a nursing home. In addition, most people want to stay in their own home or community whenever possible. An independent analysis conducted by the Lewin Group shows that Project 2020 would reach over 40 million Americans, while simultaneously reducing Medicare and Medicaid costs by more than $2.8 billion over 5 years.

Project 2020 addresses the urgent need to shift away from institutional care and towards home and community based services in three distinct ways: through enhanced nursing home diversion; by increasing the use of person-centered access to information; and by utilizing evidence-based disease and injury prevention. As I previously mentioned, increased nursing home diversion will not only provide significant savings to the Medicaid program, it will also allow families to stay together and let people be active members of their communities. Through the creation of a person-center access point to information, consumers, family members, and caregivers will be given the tools necessary to make well informed decisions about long term care. Finally, this bill will provide for programs that help consumers get proven education about avoiding preventable diseased and injuries, such as falls and malnutrition, which result in thousands of unnecessary hospitalizations every year.

As you can see, these three programs constitute a common-sense, multi-faceted approach to improving the quality of life of individuals and their families, while providing a substantial amount of savings to the health care system.

I am pleased to introduce this important legislation along with my colleague Senator STABENOW and I look forward to working with the rest of my Senate colleagues to provide families with the long term care services and support they need.

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

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

S. 1257

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Project 2020: Building on the Promise of Home and Community-Based Services Act of 2009''.

SEC. 2. LONG-TERM SERVICES AND SUPPORTS.

The Social Security Act (42 U.S.C. 301 et seq.) is amended by adding at the end the following:

''TITLE XXII—LONG-TERM SERVICES AND SUPPORTS

''SEC. 2201. DEFINITIONS.

''Except as otherwise provided, the terms used in this title have the meanings given the terms in section 102 of the Older Americans Act of 1965 (42 U.S.C. 3002).

''Subtitle A—Single-Entry Point System Program

''SEC. 2211. STATE SINGLE-ENTRY POINT SYSTEMS.

''(a) DEFINITIONS.—In this title:

''(1) LONG-TERM SERVICES AND SUPPORTS.—The term 'long-term services and supports' means any service (including a disease prevention and health promotion service, an in-home service, or a case management service), care, or item (including an assistive device) that is—

''(A) intended to assist individuals in coping with, and, to the extent practicable, compensating for, functional impairment in carrying out activities of daily living;

''(B) furnished at home, in a community care setting, including a small community care setting (as defined in section 1929(g)(1)) and a large community care setting (as defined in section 1929(h)(1)), or in a long-term care facility; and

''(C) not furnished to diagnose, treat, or cure a medical disease or condition.

''(2) SINGLE-ENTRY POINT SYSTEM.—The term 'single-entry point system' means any coordinated system for providing—

''(A) comprehensive information to consumers and caregivers on the full range of available public and private long-term services and supports, options, service providers, and resources, including information on the availability of integrated long-term care, including consumer directed care options;

''(B) personal counseling to assist individuals in assessing their existing or anticipated long-term care needs, and developing and implementing a plan for long-term care designed to meet their specific needs and circumstances; and

''(C) consumers and caregivers access to the range of publicly supported and privately supported long-term services and supports that are available.

''(b) PROGRAM.—The Secretary shall establish and carry out a single-entry point system program. In carrying out the program, the Secretary shall make grants to States, from allotments described in subsection (c), to pay for the Federal share of the cost of establishing State single-entry point systems.

''(c) ALLOTMENTS.—

''(1) ALLOTMENTS TO INDIAN TRIBES AND TERRITORIES.—

''(A) RESERVATION.—The Secretary shall reserve from the funds made available under subsection (g)—

''(i) for fiscal year 2010, $1,962,456; and

''(ii) for each subsequent fiscal year, $1,962,456, increased by the percentage increase in the Consumer Price Index for All Urban Consumers, between October of the fiscal year preceding the subsequent fiscal year and October, 2007.

''(B) ALLOTMENTS.—The Secretary shall use the funds reserved under subparagraph (A) to make allotments to—

''(i) Indian tribes; and

''(ii) Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Commonwealth of Puerto Rico, and the United States Virgin Islands.

''(2) ALLOTMENTS TO STATES.—

''(A) IN GENERAL.—

''(i) AMOUNT.—The Secretary shall allot to each eligible State for a fiscal year the sum of the fixed amount determined under subparagraph (B), and the allocation determined under subparagraph (C), for the State.

''(ii) SUBGRANTS TO AREA AGENCIES ON AGING.—

''(I) IN GENERAL.—Each State agency receiving an allotment under clause (i) shall use such allotment to make subgrants to area agencies on aging that can demonstrate performance capacity to carry out activities described in this section whether such area agency on aging carries out the activities directly or through contract with an aging network or disability entity. An area agency on agency desiring a subgrant shall establish or designate a collaborative board to ensure meaningful involvement of stakeholders in the development, planning, implementation, and evaluation of a single-entry point system consistent with the following:

''(aa) The collaborative board shall be composed of—

''(AA) individuals representing all populations served by the agency's single-entry point system, including older adults and individuals from diverse backgrounds who have a disability or a chronic condition requiring long-term support;

''(BB) a representative from the local center for independent living (as defined in section 702 of the Rehabilitation Act of 1973 (29 U.S.C. 796a)), and representatives from other organizations that provide services to the individuals served by the system and those who advocate on behalf of such individuals; and

''(CC) representatives of the government and non-governmental agencies that are affected by the system.

''(bb) The agency shall work in conjunction with the collaborative board on—

''(AA) the design and operations of the single-entry point system;

''(BB) stakeholder input; and

''(CC) other program and policy development issues related to the single-entry point system.

''(cc) An advisory board established under the Real Choice Systems Change Program or for an existing single-entry point system may be used to carry out the activities of a collaborative board under this subclause if such advisory board meets the requirements under item (aa).

''(II) SUBGRANTS TO OTHER ENTITIES.—A State agency may make subgrants described in subclause (I) to other qualified aging network or disability entities only if the area agency on aging chooses not to apply for a subgrant or is not able to demonstrate performance capacity to carry out the activities described in this section.

''(III) SUBGRANTEE RECIPIENT SUBGRANTS.—An administrator of a single-entry point system established by a State receiving an allotment under clause (i) shall make any necessary subgrants to key partners involved in developing, planning, or implementing the single-entry point system. Such partners may include centers for independent living (as defined in section 702 of the Rehabilitation Act of 1973 (29 U.S.C. 796a)).

''(B) FIXED AMOUNTS FOR STATES.—

''(i) RESERVATION.—The Secretary shall reserve from the funds made available under subsection (g)—

''(I) for fiscal year 2010, $15,759,000; and

''(II) for each subsequent fiscal year, $15,759,000, increased by the percentage increase in the Consumer Price Index for All Urban Consumers, between October of the fiscal year preceding the subsequent fiscal year and October, 2007.

''(ii) FIXED AMOUNTS.—The Secretary shall use the funds reserved under clause (i) to provide equal fixed amounts to the States.

''(C) ALLOCATION FOR STATES.—The Secretary shall allocate to each eligible State for a fiscal year an amount that bears the same relationship to the funds made available under subsection (g) (and not reserved under paragraph (1) or subparagraph (B)) for that fiscal year as the number of persons who are either older individuals or individuals with disabilities in that State bears to the number of such persons or individuals in all the States.

''(D) DETERMINATION OF NUMBER OF PERSONS.—

''(i) OLDER INDIVIDUALS.—The number of older individuals in any State and in all States shall be determined by the Secretary on the basis of the most recent data available from the Bureau of the Census, and other reliable demographic data satisfactory to the Secretary.

''(ii) INDIVIDUALS WITH DISABILITIES.—The number of individuals with disabilities in any State and in all States shall be determined by the Secretary on the basis of the most recent data available from the American Community Survey, and other reliable demographic data satisfactory to the Secretary, on individuals who have a sensory disability, physical disability, mental disability, self-care disability, go-outside-home disability, or employment disability.

''(3) ELIGIBILITY.—In addition to the States determined by the Secretary to be eligible for a grant under this section, a State that receives a Federal grant for an aging and disability resource center is eligible for a grant under this section.

''(4) DEFINITION.—In this subsection, the term 'State' shall not include any jurisdiction described in paragraph (1)(B)(ii).

''(d) APPLICATIONS.—

''(1) IN GENERAL.—To be eligible to receive an initial grant under this section, a State agency shall, after consulting and coordinating with consumers, other stakeholders, centers for independent living in the State, if any, and area agencies on aging in the State, if any, submit an application to the Secretary at such time, in such manner, and containing the following information:

''(A) Evidence of substantial involvement of stakeholders and agencies in the State that are administering programs that will be the subject of referrals.

''(B) The applicant's plan for providing—

''(i) comprehensive information on the full range of available public and private long-term services and supports options, providers, and resources, including building awareness of the single-entry point system as a resource;

''(ii) objective, neutral, and personal information, counseling, and assistance to individuals and their caregivers in assessing their existing or anticipated long-term care needs, and developing and implementing a plan for long-term care to meet their needs;

''(iii) for eligibility screening and referral for services;

''(iv) for stakeholder input;

''(v) for a management information system; and

''(vi) for an evaluation of the effectiveness of the single-entry point system.

''(C) A specification of the period of the grant request, which shall include not less than 3 consecutive fiscal years in the 5-fiscal-year-period beginning with fiscal year 2010.

''(D) Such other information as the Secretary determines appropriate.

''(2) APPLICATION FOR CONTINUATION.—

''(A) IN GENERAL.—A State that receives an initial grant under this section shall apply, after consulting and coordinating with the area agencies on aging, for a continuation of the initial grant, which includes a description of any significant changes to the information provided in the initial application and such data concerning performance measures related to the requirements in the initial application as the Secretary shall require.

''(B) EFFECT.—The requirement under subparagraph (A) shall be in effect through fiscal year 2020.

''(e) USE OF FUNDS.—

''(1) IN GENERAL.—A State that receives a grant under this section shall use the funds made available through the grant to—

''(A) establish a State single-entry point system, to enable older individuals and individuals with disabilities and their caregivers to obtain resources concerning long-term services and supports options; and

''(B) provide information on, access to, and assistance regarding long-term services and supports.

''(2) SERVICES.—In particular, the State single-entry point system shall be the referral source to—

''(A) provide information about long-term care planning and available long-term services and supports through a variety of media (such as websites, seminars, and pamphlets);

''(B) provide assistance with making decisions about long-term services and supports

and determining the most appropriate services through options counseling, future financial planning, and case management;

''(C) provide streamlined access to and assistance with applying for federally funded long-term care benefits (including medical assistance under title XIX, Medicare skilled nursing facility services, services under title III of the Older Americans Act of 1965 (42 U.S.C. 3021 et seq.), the services of Aging and Disability Resource Centers), and State-funded and privately funded long-term care benefits, through efforts to shorten and simplify the eligibility processes for older individuals and individuals with disabilities;

''(D) provide referrals to the State evidence-based disease prevention and health promotion programs under subtitle B;

''(E) allocate the State funds available under subtitle C and carry out the State enhanced nursing home diversion program under subtitle C; and

''(F) and provide information about, other services available in the State that may assist an individual to remain in the community, including the Medicare and Medicaid programs, the State health insurance assistance program, the supplemental nutrition assistance program established under the Food and Nutrition Act of 2008 (7 U.S.C. 2011 et seq.), and the Low-Income Home Energy Assistance Program under the Low-Income Home Energy Assistance Act of 1981 (42 U.S.C. 8621 et seq.), and such other services, as the State shall include.

''(3) COLLABORATIVE ARRANGEMENTS.—

''(A) CENTER FOR INDEPENDENT LIVING.—Each entity receiving an allotment under subsection (c) shall involve in the planning and implementation of the single-entry point system the local center for independent living (as defined in section 702 of the Rehabilitation Act of 1973 (29 U.S.C. 796a)), which provides information, referral, assistance, or services to individuals with disabilities.

''(B) OTHER ENTITIES.—To the extent practicable, the State single-entry point system shall enter into collaborative arrangements with aging and disability programs, service providers, agencies, the direct care work force, and other entities in order to ensure that information about such services may be made available to individuals accessing the State single-entry point system.

''(f) FEDERAL SHARE.—

''(1) IN GENERAL.—The Federal share of the cost described in subsection (b) shall be 75 percent.

''(2) NON-FEDERAL SHARE.—The State may provide the non-Federal share of the cost in cash or in-kind, fairly evaluated, including plant, equipment, or services. The State may provide the non-Federal share from State, local, or private sources.

''(g) FUNDING.—

''(1) IN GENERAL.—The Secretary shall use amounts made available under paragraph (2) to make the grants described in subsection (b).

''(2) FUNDING.—There are authorized to be appropriated to carry out this section—

''(A) $30,900,000 for fiscal year 2010;
''(B) $38,264,000 for fiscal year 2011;
''(C) $48,410,000 for fiscal year 2012;
''(D) $53,560,000 for fiscal year 2013;
''(E) $63,860,000 for fiscal year 2014;
''(F) $69,010,000 for fiscal year 2015;
''(G) $74,160,000 for fiscal year 2016;
''(H) $79,310,000 for fiscal year 2017;
''(I) $84,460,000 for fiscal year 2018;
''(J) $89,610,000 for fiscal year 2019; and
''(K) $95,790,000 for fiscal year 2020.

''(3) AVAILABILITY.—Funds appropriated under paragraph (2) shall remain available until expended.

''Subtitle B—Healthy Living Program

''SEC. 2221. EVIDENCE-BASED DISEASE PREVENTION AND HEALTH PROMOTION PROGRAMS.

''(a) PROGRAM.—The Secretary shall establish and carry out a healthy living program. In carrying out the program, the Secretary shall make grants to State agencies, from allotments described in subsection (b), to pay for the Federal share of the cost of carrying out evidence-based disease prevention and health promotion programs.

''(b) ALLOTMENTS.—

''(1) ALLOTMENTS TO INDIAN TRIBES AND TERRITORIES.—

''(A) RESERVATION.—The Secretary shall reserve from the funds made available under subsection (g)—

''(i) for fiscal year 2010, $1,500,952; and

''(ii) for each subsequent fiscal year, $1,500,952, increased by the percentage increase in the Consumer Price Index for All Urban Consumers, between October of the fiscal year preceding the subsequent fiscal year and October, 2007.

''(B) ALLOTMENTS.—The Secretary shall use the reserved funds under subparagraph (A) to make allotments to—

''(i) Indian tribes; and

''(ii) Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Commonwealth of Puerto Rico, and the United States Virgin Islands.

''(2) IN GENERAL.—

''(A) AMOUNTS.—

''(i) IN GENERAL.—Except as provided in paragraph (3), the Secretary shall allot to each eligible State for a fiscal year an amount that bears the same relationship to the funds made available under this section and not reserved under paragraph (1) for that fiscal year as the number of older individuals in the State bears to the number of older individuals in all the States.

''(ii) OLDER INDIVIDUALS.—The number of older individuals in any State and in all States shall be determined by the Secretary on the basis of the most recent data available from the Bureau of the Census, and other reliable demographic data satisfactory to the Secretary.

''(B) SUBGRANTS.—

''(i) IN GENERAL.—Each State agency that receives an amount under subparagraph (A) shall award subgrants to area agencies on aging that can demonstrate performance capacity to carry out activities under this section whether such area agency on aging carries out the activities directly or through contract with an aging network entity.

''(ii) SUBGRANTS TO OTHER ENTITIES.—A State agency may make subgrants described in clause (i) to other qualified aging network entities only if the area agency on aging chooses not to apply for a subgrant or is not able to demonstrate performance capacity to carry out the activities described in this section.

''(3) MINIMUM ALLOTMENT.—No State shall receive an allotment under this section for a fiscal year that is less than 0.5 percent of the funds made available to carry out this section for that fiscal year and not reserved under paragraph (1).

''(4) ELIGIBILITY.—In addition to the States determined by the Secretary to be eligible for a grant under this section, a State that receives a Federal grant for evidence-based disease prevention is eligible for a grant under this section.

''(c) APPLICATIONS.—To be eligible to receive a grant under this section, a State agency shall, after consulting and coordinating with consumers, other stakeholders, and area agencies on aging in the State, if any, submit an application to the Secretary at such time, in such manner, and containing the following information:

''(1) A description of the evidence-based disease prevention and health promotion program.

''(2) Sufficient information to demonstrate that the infrastructure exists to support the program.

''(3) A specification of the period of the grant request, which shall include not less than 3 consecutive fiscal years in the 5 fiscal year period beginning with fiscal year 2010.

''(4) Such other information as the Secretary determines appropriate.

''(d) APPLICATION FOR CONTINUATION.—

''(1) IN GENERAL.—A State that receives an initial grant under this section shall apply, after consulting and coordinating with the area agencies on aging, for a continuation of the initial grant, which application shall include—

''(A) a description of any significant changes to the information provided in the initial application; and

''(B) such data concerning performance measures related to the requirements in the initial application as the Secretary shall require.

''(2) EFFECT.—The requirement under paragraph (1) shall be in effect through fiscal year 2020.

''(e) USE OF FUNDS.—A State that receives a grant under this section shall use the funds made available through the grant to carry out—

''(1) an evidence-based chronic disease self-management program;

''(2) an evidence-based falls prevention program; or

''(3) another evidence-based disease prevention and health promotion program.

''(f) FEDERAL SHARE.—

''(1) IN GENERAL.—The Federal share of the cost described in subsection (a) shall be 85 percent.

''(2) NON-FEDERAL SHARE.—The State may provide the non-Federal share of the cost in cash or in-kind, fairly evaluated, including plant, equipment, or services. The State may provide the non-Federal share from State, local, or private sources.

''(g) FUNDING.—

''(1) IN GENERAL.—The Secretary shall use amounts made available under paragraph (2) to make the grants described in subsection (a).

''(2) FUNDING.—There are authorized to be appropriated to carry out this section—

''(A) $36,050,000 for fiscal year 2010;
''(B) $41,200,000 for fiscal year 2011;
''(C) $56,650,000 for fiscal year 2012;
''(D) $77,250,000 for fiscal year 2013;
''(E) $92,700,000 for fiscal year 2014;
''(F) $103,000,000 for fiscal year 2015;
''(G) $118,450,000 for fiscal year 2016;
''(H) $133,900,000 for fiscal year 2017;
''(I) $149,350,000 for fiscal year 2018;
''(J) $157,590,000 for fiscal year 2019; and
''(K) $173,040,000 for fiscal year 2020.

''(3) AVAILABILITY.—Funds appropriated under paragraph (2) shall remain available until expended.

''Subtitle C—Diversion Programs

''SEC. 2231. ENHANCED NURSING HOME DIVERSION PROGRAMS.

''(a) DEFINITION.—In this section:

''(1) LOW-INCOME SENIOR.—The term 'low-income senior' means an individual who—

''(A) is age 75 or older; and

''(B) is from a household with a household income that is not less than 150 percent, and not more than 300 percent, of the poverty line.

''(2) NURSING HOME.—The term 'nursing home' means—

''(A) a skilled nursing facility, as defined in section 1819(a); or

''(B) a nursing facility, as defined in section 1919(a).

''(b) PROGRAM.—

''(1) IN GENERAL.—The Secretary shall establish and carry out a diversion program. In carrying out the program, the Secretary shall make grants to States, from allotments described in subsection (c), to pay for the Federal share of the cost of carrying out enhanced nursing home diversion programs.

''(2) COHORTS.—The Secretary shall make the grants to—

''(A) a first year cohort consisting of one third of the States, for fiscal year 2010;

''(B) a second year cohort consisting of the cohort described in subparagraph (A) and an additional one third of the States, for fiscal year 2011; and

''(C) a third year cohort consisting of all the eligible States, for fiscal year 2012 and each subsequent fiscal year.

''(3) READINESS.—In determining whether to include an eligible State in the first year, second year, or third year and subsequent year cohort, the Secretary shall consider the readiness of the State to carry out an enhanced nursing home diversion program under this section. Readiness shall be determined based on a consideration of the following factors:

''(A) Availability of a comprehensive array of home- and community-based services.

''(B) Sufficient home- and community-based services provider capacity.

''(C) Availability of housing.

''(D) Availability of supports for consumer-directed services, including whether a fiscal intermediary is in place.

''(E) Ability to perform timely eligibility determinations and assessment for services.

''(F) Existence of a quality assessment and improvement program for home and community-based services.

''(G) Such other factors as the Secretary determines appropriate.

''(c) ALLOTMENTS.—

''(1) IN GENERAL.—

''(A) AMOUNT.—The Secretary shall allot to an eligible State (within the applicable cohort) for a fiscal year an amount that bears the same relationship to the funds made available under subsection (i) for that fiscal year as the number of low-income seniors in the State bears to the number of low-income seniors within States in the applicable cohort for that fiscal year.

''(B) LOW-INCOME SENIORS.—The number of low-income seniors in any State and in all States shall be determined by the Secretary on the basis of the most recent data available from the American Community Survey, and other reliable demographic data satisfactory to the Secretary.

''(2) ELIGIBILITY.—In addition to the States determined by the Secretary to be eligible for a grant under this section, a State that receives a Federal grant for a nursing home diversion is eligible for a grant under this section.

''(d) APPLICATIONS.—To be eligible to receive a grant under this section, a State agency shall, after consulting and coordinating with consumers, other stakeholders, and area agencies on aging in the State, if any, submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may require, including a specification of the period of the grant request, which shall include not less than 3 consecutive fiscal years in the 5 fiscal year period beginning with the fiscal year prior to the year of application.

''(e) APPLICATION FOR CONTINUATION.—

''(1) IN GENERAL.—A State that receives an initial grant under this section shall apply, after consulting and coordinating with the area agencies on aging, for a continuation of the initial grant, which application shall include—

''(A) a description of any significant changes to the information provided in the initial application; and

''(B) such data concerning performance measures related to the requirements in the initial application as the Secretary shall require.

''(2) EFFECT.—The requirement under paragraph (1) shall be in effect through fiscal year 2020.

''(f) USE OF FUNDS.—

''(1) IN GENERAL.—A State that receives a grant under this section shall carry out the following:

''(A) Use the funds made available through the grant to carry out an enhanced nursing home diversion program that enables eligible individuals to avoid admission into nursing homes by enabling the individuals to obtain alternative long-term services and supports and remain in their communities.

''(B) Award subgrants to area agencies on aging that can demonstrate performance capacity to carry out activities under this section whether such area agency on aging carries out the activities directly or through contract with an aging network entity. A State may make subgrants to other qualified aging network entities only if the area agency on aging chooses not to apply for a subgrant or is not able to demonstrate performance capacity to carry out the activities described in this section.

''(2) CASE MANAGEMENT.—

''(A) IN GENERAL.—The State, through the State single-entry point system established under subtitle A, shall provide for case management services to the eligible individuals.

''(B) USE OF EXISTING SERVICES.—In carrying out subparagraph (A), the State agency or area agency on aging may utilize existing case management services delivery networks if—

''(i) the networks have adequate safeguards against potential conflicts of interest; and

''(ii) the State agency or area agency on aging includes a description of such safeguards in the grant application.

''(C) CARE PLAN.—The State shall provide for development of a care plan for each eligible individual served, in consultation with the eligible individual and their caregiver, as appropriate. In developing the care plan, the State shall explain the option of consumer directed care and assist an individual, who so requests, with developing a consumer-directed care plan that shall include arranging for support services and funding. Such assistance shall include providing information and outreach to individuals in the hospital, in a nursing home for post-acute care, or undergoing changes in their health status or caregiver situation.

''(g) ELIGIBLE INDIVIDUALS.—In this section, the term 'eligible individual' means an individual—

''(1) who has been determined by the State to be at high functional risk of nursing home placement, as defined by the State agency in the State agency's grant application;

''(2) who is not eligible for medical assistance under title XIX; and

''(3) who meets the income and asset eligibility requirements established by the State and included in such State's grant application for approval by the Secretary.

''(h) FEDERAL SHARE.—

''(1) IN GENERAL.—The Federal share of the cost described in subsection (b) shall be, for a State and for a fiscal year, the sum of—

''(A) the Federal medical assistance percentage applicable to the State for the year under section 1905(b); and

''(B) 5 percentage points.

''(2) NON-FEDERAL SHARE.—The State may provide the non-Federal share of the cost in cash or in-kind, fairly evaluated, including plant, equipment, or services. The State may provide the non-Federal share from State, local, or private sources.

''(i) FUNDING.—

''(1) IN GENERAL.—The Secretary shall use amounts made available under paragraph (2) to make the grants described in subsection (b).

''(2) FUNDING.—There are authorized to be appropriated to carry out this section—

''(A) $111,825,137 for fiscal year 2010;

''(B) $337,525,753 for fiscal year 2011;

''(C) $650,098,349 for fiscal year 2012;

''(D) $865,801,631 for fiscal year 2013;

''(E) $988,504,887 for fiscal year 2014;

''(F) $1,124,547,250 for fiscal year 2015;

''(G) $1,276,750,865 for fiscal year 2016;

''(H) $1,364,488,901 for fiscal year 2017;

''(I) $1,466,769,052 for fiscal year 2018;

''(J) $1,712,755,702 for fiscal year 2019; and

''(K) $1,712,755,702 for fiscal year 2020.

''(3) AVAILABILITY.—Funds appropriated under paragraph (2) shall remain available until expended.

''Subtitle D—Administration, Evaluation, and Technical Assistance

''SEC. 2241. ADMINISTRATION, EVALUATION, AND TECHNICAL ASSISTANCE.

''(a) ADMINISTRATION AND EXPENSES.—For purposes of carrying out this title, there are authorized to be appropriated for administration and expenses—

''(1) of the area agencies on aging—

''(A) $16,825,895 for fiscal year 2010;

''(B) $39,246,141 for fiscal year 2011;

''(C) $50,766,948 for fiscal year 2012;

''(D) $66,999,101 for fiscal year 2013;

''(E) $76,979,152 for fiscal year 2014;

''(F) $87,163,513 for fiscal year 2015;

''(G) $98,780,562 for fiscal year 2016;

''(H) $106,063,792 for fiscal year 2017;

''(I) $114,324,642 for fiscal year 2018;

''(J) $123,312,948 for fiscal year 2019; and

''(K) $133,215,845 for fiscal year 2020;

''(2) of the State agencies—

''(A) $8,412,948 for fiscal year 2010;

''(B) $19,623,071 for fiscal year 2011;

''(C) $25,383,474 for fiscal year 2012;

''(D) $33,499,551 for fiscal year 2013;

''(E) $38,489,576 for fiscal year 2014;

''(F) $43,581,756 for fiscal year 2015;

''(G) $49,390,281 for fiscal year 2016;

''(H) $53,031,896 for fiscal year 2017;

''(I) $57,162,321 for fiscal year 2018;

''(J) $61,656,474 for fiscal year 2019; and

''(K) $66,607,923 for fiscal year 2020; and

''(3) of the Administration—

''(A) $2,103,237 for fiscal year 2010;

''(B) $4,905,768 for fiscal year 2011;

''(C) $6,345,868 for fiscal year 2012;

''(D) $8,374,888 for fiscal year 2013;

''(E) $9,622,394 for fiscal year 2014;

''(F) $10,895,439 for fiscal year 2015;

''(G) $12,347,570 for fiscal year 2016;

''(H) $13,257,974 for fiscal year 2017;

''(I) $14,290,580 for fiscal year 2018;

''(J) $15,414,118 for fiscal year 2019; and

''(K) $16,651,981 for fiscal year 2020.

''(b) EVALUATION AND TECHNICAL ASSISTANCE.—

''(1) CONDITIONS TO RECEIPT OF GRANT.—In awarding grants under this title, the Secretary shall condition receipt of the grant for the second and subsequent grant years on a satisfactory determination that the State agency is meeting benchmarks specified in the grant agreement for each grant awarded under this title.

''(2) EVALUATIONS.—The Secretary shall measure and evaluate, either directly or through grants or contracts, the impact of the programs authorized under this title. Not later than June 1 of the year that is 6 years after the year of the date of enactment of the Project 2020: Building on the Promise of Home and Community-Based Services Act of 2009 and every 2 years thereafter, the Secretary shall—

''(A) compile the reports of the measures and evaluations of the grantees;

''(B) establish benchmarks to show progress toward savings; and

''(C) present a compilation of the information under this paragraph to Congress.

''(3) TECHNICAL ASSISTANCE GRANTS.—The Secretary shall award technical assistance grants, including State specific grants whenever practicable, to carry out the programs authorized under this title.

''(4) TRANSFER.—There are authorized to be appropriated for such evaluation and technical assistance under this subsection—

''(A) $4,206,474 for fiscal year 2010;

''(B) $9,811,535 for fiscal year 2011;

''(C) $8,461,158 for fiscal year 2012;

''(D) $11,166,517 for fiscal year 2013;

''(E) $12,829,859 for fiscal year 2014;

''(F) $14,527,252 for fiscal year 2015;

''(G) $16,463,427 for fiscal year 2016;

''(H) $17,677,299 for fiscal year 2017;

''(I) $19,054,107 for fiscal year 2018;

''(J) $20,552,158 for fiscal year 2019; and

''(K) $22,202,641 for fiscal year 2020.

''(c) AVAILABILITY.—Funds appropriated under this section shall remain available until expended.''.

SUBMITTED RESOLUTIONS

SENATE RESOLUTION 183—CELEBRATING THE LIFE AND ACHIEVEMENTS OF MILLARD FULLER, THE FOUNDER OF HABITAT FOR HUMANITY

Mr. SHELBY (for himself, Mr. SESSIONS, Mr. ISAKSON, and Mr. CHAMBLISS) submitted the following resolution; which was considered and agreed to:

S. RES. 183

Whereas Millard Fuller was born on January 3, 1935, in the small cotton-mill town of Lanett, in Chambers County, Alabama, and would later graduate from Auburn University and the University of Alabama School of Law;

Whereas Millard Fuller became a self-made millionaire by the age of 29 and could have lived out the rest of his life in comfort, but instead he and his wife sold all of their possessions, donated the proceeds to the poor, and began searching for a new purpose for their lives;

Whereas Millard Fuller and his wife established Habitat for Humanity in Americus, Georgia, in 1976;

Whereas Habitat for Humanity has constructed more than 300,000 homes for 1,500,000 people and has a presence in all 50 States, the District of Columbia, Guam, Puerto Rico, and more than 90 countries around the world;

Whereas Habitat for Humanity's noteworthy accomplishments include building 263 houses across the United States in 1 week and massive rebuilding efforts in New Orleans following Hurricane Katrina;

Whereas in 2005, Millard Fuller established The Fuller Center for Housing, which works with local organizations to provide support and guidance to repair and build homes for impoverished individuals and is located in 24 States and 15 countries on 5 continents;

Whereas Millard Fuller provided 3 decades of leadership and service to Habitat for Humanity and The Fuller Center for Housing, committing his life to philanthropy and service to others while raising global concern for homelessness and poverty;

Whereas Millard Fuller was honored with over 50 honorary doctorate degrees by colleges and universities throughout the United States and was awarded the Presidential Medal of Freedom, the Nation's highest civilian honor, by President William Jefferson Clinton in 1996; and

Whereas Millard Fuller passed away on February 3, 2009, leaving behind a loving wife, a proud family, and a legacy that will extend far beyond his life: Now, therefore, be it

Resolved, That the Senate—

(1) celebrates the life and achievements of Millard Fuller;

(2) acknowledges the millions of people he and his organization have served and the inspiration he has given to so many; and

(3) encourages all the people of the United States to recognize and pay tribute to Millard Fuller's life by following the example of service that he set.

SENATE RESOLUTION 184—OFFERING DEEPEST CONDOLENCES TO THE FAMILY AND FRIENDS OF OFFICER STEPHEN T. JOHNS AND CALLING ON THE LEADERS OF ALL NATIONS TO SPEAK OUT AGAINST THE MANIFESTATIONS OF ANTI-SEMITISM, BIGOTRY, AND HATRED

Mr. CARDIN (for himself, Mr. DURBIN, Mr. AKAKA, Mr. ALEXANDER, Mr. BARRASSO, Mr. BAUCUS, Mr. BAYH, Mr. BEGICH, Mr. BENNET, Mr. BENNETT, Mr. BINGAMAN, Mr. BOND, Mrs. BOXER, Mr. BROWN, Mr. BROWNBACK, Mr. BUNNING, Mr. BURR, Mr. BURRIS, Mr. BYRD, Ms. CANTWELL, Mr. CARPER, Mr. CASEY, Mr. CHAMBLISS, Mr. COBURN, Mr. COCHRAN, Ms. COLLINS, Mr. CONRAD, Mr. CORKER, Mr. CORNYN, Mr. CRAPO, Mr. DEMINT, Mr. DODD, Mr. DORGAN, Mr. ENSIGN, Mr. ENZI, Mr. FEINGOLD, Mrs. FEINSTEIN, Mrs. GILLIBRAND, Mr. GRAHAM, Mr. GRASSLEY, Mr. GREGG, Mrs. HAGAN, Mr. HARKIN, Mr. HATCH, Mrs. HUTCHISON, Mr. INHOFE, Mr. INOUYE, Mr. ISAKSON, Mr. JOHANNS, Mr. JOHNSON, Mr. KAUFMAN, Mr. KENNEDY, Mr. KERRY, Ms. KLOBUCHAR, Mr. KOHL, Mr. KYL, Ms. LANDRIEU, Mr. LAUTENBERG, Mr. LEAHY, Mr. LEVIN, Mr. LIEBERMAN, Mrs. LINCOLN, Mr. LUGAR, Mr. MARTINEZ, Mr. MCCAIN, Mrs. MCCASKILL, Mr. MCCONNELL, Mr. MENENDEZ, Mr. MERKLEY, Ms. MIKULSKI, Ms. MURKOWSKI, Mrs. MURRAY, Mr. NELSON of Florida, Mr. NELSON of Nebraska, Mr. PRYOR, Mr. REED, Mr. REID, Mr. RISCH, Mr. ROBERTS, Mr. ROCKEFELLER, Mr. SANDERS, Mr. SCHUMER, Mr. SESSIONS, Mrs. SHAHEEN, Mr. SHELBY, Ms. SNOWE, Mr. SPECTER, Ms. STABENOW, Mr. TESTER, Mr. THUNE, Mr. UDALL of Colorado, Mr. UDALL of New Mexico, Mr. VITTER, Mr. VOINOVICH, Mr. WARNER, Mr. WEBB, Mr. WHITEHOUSE, Mr. WICKER, and Mr. WYDEN) submitted the following resolution; which was considered and agreed to:

S. RES. 184

Whereas the United States Holocaust Memorial Museum was established as a ''living memorial that stimulates leaders and citizens to confront hatred, prevent genocide, promote human dignity, and strengthen democracy'';

Whereas, since the dedication of the United States Holocaust Memorial Museum in 1993, the United States Holocaust Memorial Museum has welcomed nearly 30,000,000 visitors, including more than 8,000,000 school children and 85 heads of state;

Whereas, on June 10, 2009, in an assault at the entrance of the United States Holocaust Memorial Museum, Officer Stephen T. Johns of Temple Hills, Maryland, was fatally wounded and died heroically in the line of duty;

Whereas, in the wake of this heinous act of violence, the people of the United States should renew the commitment to end bigotry, intolerance, and hatred; and

Whereas there is no place in the society of the United States for individuals who seek to harm or deny rights to others, especially based on religion, race, or ethnic identity: Now, therefore, be it

Resolved, That the Senate—

(1) offers deepest condolences to the family and friends of Officer Stephen T. Johns;

(2) commends the staff members of the United States Holocaust Memorial Museum for their courage and bravery in responding to the attack on June 10, 2009;

(3) condemns anti-Semitism and all forms of religious, ethnic, and racial bigotry;

(4) condemns acts of physical violence against, and harassment of, people based on race, gender, ethnicity, or religious affiliation; and

(5) calls on the leaders of all Nations to speak out against the manifestations of anti-Semitism, bigotry, and hatred.

SENATE CONCURRENT RESOLUTION 26—APOLOGIZING FOR THE ENSLAVEMENT AND RACIAL SEGREGATION OF AFRICAN AMERICANS

Mr. HARKIN (for himself, Mr. BROWNBACK, Mr. LEVIN, Mr. DURBIN, Mr. KENNEDY, Mr. LAUTENBERG, Ms. STABENOW, Mr. BOND, and Mr. COCHRAN) submitted the following conrurrent resolution; which was ordered held at the desk:

S. CON. RES. 26

Whereas, during the history of the Nation, the United States has grown into a symbol of democracy and freedom around the world;

Whereas the legacy of African Americans is interwoven with the very fabric of the democracy and freedom of the United States;

Whereas millions of Africans and their descendants were enslaved in the United States and the 13 American colonies from 1619 through 1865;

Whereas Africans forced into slavery were brutalized, humiliated, dehumanized, and subjected to the indignity of being stripped of their names and heritage;

Whereas many enslaved families were torn apart after family members were sold separately;

Whereas the system of slavery and the visceral racism against people of African descent upon which it depended became enmeshed in the social fabric of the United States;

Whereas slavery was not officially abolished until the ratification of the 13th amendment to the Constitution of the United States in 1865, after the end of the Civil War;

Whereas after emancipation from 246 years of slavery, African Americans soon saw the fleeting political, social, and economic gains they made during Reconstruction eviscerated by virulent racism, lynchings, disenfranchisement, Black Codes, and racial segregation laws that imposed a rigid system of officially sanctioned racial segregation in virtually all areas of life;

Whereas the system of de jure racial segregation known as ''Jim Crow'', which arose in certain parts of the United States after

the Civil War to create separate and unequal societies for Whites and African Americans, was a direct result of the racism against people of African descent that was engendered by slavery;

Whereas the system of Jim Crow laws officially existed until the 1960's—a century after the official end of slavery in the United States—until Congress took action to end it, but the vestiges of Jim Crow continue to this day;

Whereas African Americans continue to suffer from the consequences of slavery and Jim Crow laws—long after both systems were formally abolished—through enormous damage and loss, both tangible and intangible, including the loss of human dignity and liberty;

Whereas the story of the enslavement and de jure segregation of African Americans and the dehumanizing atrocities committed against them should not be purged from or minimized in the telling of the history of the United States;

Whereas those African Americans who suffered under slavery and Jim Crow laws, and their descendants, exemplify the strength of the human character and provide a model of courage, commitment, and perseverance;

Whereas, on July 8, 2003, during a trip to Goree Island, Senegal, a former slave port, President George W. Bush acknowledged the continuing legacy of slavery in life in the United States and the need to confront that legacy, when he stated that slavery ''was . . . one of the greatest crimes of history . . . The racial bigotry fed by slavery did not end with slavery or with segregation. And many of the issues that still trouble America have roots in the bitter experience of other times. But however long the journey, our destiny is set: liberty and justice for all.'';

Whereas President Bill Clinton also acknowledged the deep-seated problems caused by the continuing legacy of racism against African Americans that began with slavery, when he initiated a national dialogue about race;

Whereas an apology for centuries of brutal dehumanization and injustices cannot erase the past, but confession of the wrongs committed and a formal apology to African Americans will help bind the wounds of the Nation that are rooted in slavery and can speed racial healing and reconciliation and help the people of the United States understand the past and honor the history of all people of the United States;

Whereas the legislatures of the Commonwealth of Virginia and the States of Alabama, Florida, Maryland, and North Carolina have taken the lead in adopting resolutions officially expressing appropriate remorse for slavery, and other State legislatures are considering similar resolutions; and

Whereas it is important for the people of the United States, who legally recognized slavery through the Constitution and the laws of the United States, to make a formal apology for slavery and for its successor, Jim Crow, so they can move forward and seek reconciliation, justice, and harmony for all people of the United States: Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), That the sense of the Congress is the following:

(1) APOLOGY FOR THE ENSLAVEMENT AND SEGREGATION OF AFRICAN-AMERICANS.—The Congress—

(A) acknowledges the fundamental injustice, cruelty, brutality, and inhumanity of slavery and Jim Crow laws;

(B) apologizes to African Americans on behalf of the people of the United States, for the wrongs committed against them and their ancestors who suffered under slavery and Jim Crow laws; and

(C) expresses its recommitment to the principle that all people are created equal and endowed with inalienable rights to life, liberty, and the pursuit of happiness, and calls on all people of the United States to work toward eliminating racial prejudices, injustices, and discrimination from our society.

(2) DISCLAIMER.—Nothing in this resolution—

(A) authorizes or supports any claim against the United States; or

(B) serves as a settlement of any claim against the United States.

NOTICE OF HEARING

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. BINGAMAN. Mr. President, I would like to announce for the information of the Senate and the public that the business meeting of the Committee on Energy and Natural Resources that reconvened on Thursday, June 11, 2009, will resume in SD–366 of the Dirksen Senate Office Building, on Tuesday, June 16, 2009, at 10:15 a.m., until 11 a.m.

The business meeting will then reconvene on Wednesday, June 17, 2009, at 9 a.m. until 10 a.m.

The purpose of the business meeting is to consider pending energy legislation.

For further information, please contact Sam Fowler at (202) 224–7571 or Amanda Kelly at (202) 224–6836.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON ARMED SERVICES

Mr. NELSON of Florida. Mr. President, I ask unanimous consent that the committee on Armed Services be authorized to meet during the session of the Senate on Thursday, June 11, 2009, at 9:30 a.m.

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

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. NELSON of Florida. Mr. President, I ask unanimous consent that the Committee on Energy and Natural Resources be authorized to meet during the session of the Senate on Thursday, June 11, 2009, at 2 p.m., in room SD–366 of the Dirksen Senate Office Building.

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

COMMITTEE ON FOREIGN RELATIONS

Mr. NELSON of Florida. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Thursday, June 11, 2009, at 2 p.m. to hold a hearing entitled ''North Korea Back at the Brink?''.

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

COMMITTEE ON HEALTH, EDUCATION, LABOR, AND PENSIONS

Mr. NELSON of Florida. Mr. President, I ask unanimous consent that the Committee on Health, Education, Labor, and Pensions be authorized to meet, during the session of the Senate, to conduct a hearing entitled ''Healthcare Reform'' on Thursday, June 11, 2009. The hearing will commence at 3 p.m. in room 216 of the Hart Senate Office Building.

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

COMMITTEE ON INDIAN AFFAIRS

Mr. NELSON of Florida. Mr. President, I ask unanimous consent that the Committee on Indian Affairs be authorized to meet during the session of the Senate on Thursday, June 11, 2009, at 2:15 p.m. in room 628 of the Dirksen Senate Office Building.

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

COMMITTEE ON THE JUDICIARY

Mr. NELSON of Florida. Mr. President, I ask unanimous consent that the Committee on the Judiciary be authorized to meet during the session of the Senate, on June 11, 2009, at 10 a.m. in room SD–226 of the Dirksen Senate Office Building, to conduct an executive business meeting.

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

COMMITTEE ON RULES AND ADMINISTRATION

Mr. NELSON of Florida. Mr. President, I ask unanimous consent that the Committee on Rules and Administration be authorized to meet during the session of the Senate on Thursday, June 11, 2009, at 2:45 p.m.

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

SELECT COMMITTEE ON INTELLIGENCE

Mr. NELSON of Florida. Mr. President, I ask unanimous consent that the Select Committee on Intelligence be authorized to met during the session of the Senate on June 11, 2009, at 2 p.m.

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

SUBCOMMITTEE ON CRIME AND DRUGS

Mr. NELSON of Florida. Mr. President, I ask unanimous consent that the Committee on the Judiciary, Subcommittee on Crime and Drugs, be authorized to meet during the session of the Senate, on June 11, 2009, at 3 p.m., in room SD–226 of the Dirksen Senate Office Building, to conduct a hearing entitled ''Exploring the National Criminal Justice Commission Act of 2009.''

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

SUBCOMMITTEE ON OCEANS, ATMOSPHERE, FISHERIES, AND COAST GUARD

Mr. NELSON of Florida. Mr. President, I ask unanimous consent that the Subcommittee on Oceans, Atmosphere, Fisheries, and Coast Guard of the Committee on Commerce, Science, and Transportation be authorized to meet during the session of the Senate on Thursday, June 11, 2009 at 11 a.m., in room 253 of the Russell Senate Office Building.

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

SUBCOMMITTEE ON OVERSIGHT OF GOVERNMENT MANAGEMENT, THE FEDERAL WORKFORCE, AND THE DISTRICT OF COLUMBIA.

Mr. NELSON of Florida. Mr. President, I ask unanimous consent that the Committee on Homeland Security and Governmental Affairs' Subcommittee on Oversight of Government Management, the Federal Workforce, and the District of Columbia be authorized to meet during the session of the Senate on Thursday, June 11, 2009, at 2:30 p.m. to conduct a hearing entitled, ''S. 372—The Whistleblower Protection Enhancement Act of 2009.''

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

PRIVILEGES OF THE FLOOR

Mr. DORGAN. Mr. President, I ask unanimous consent that Ryan Douglas, Christian Fjeld, and Lisa Hone, Congressional fellows with the Commerce Committee, be allowed floor privileges during the consideration of S. 1023.

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

UNANIMOUS CONSENT AGREEMENT—S. CON. RES. 26

Mr. REID. I ask unanimous consent that on Thursday, June 18, following a period of morning business, the Senate proceed to the consideration of S. Con. Res. 26, a concurrent resolution submitted earlier today, and relating to slavery apology; that the concurrent resolution be held at the desk; that there be 60 minutes for debate with respect to the concurrent resolution, with the time equally divided and controlled between the two leaders or their designees; that no amendments be in order to the concurrent resolution or preamble; that upon the use or yielding back of time, the Senate proceed to vote on adoption of the concurrent resolution; that upon adoption, the preamble be agreed to; and the motions to reconsider be laid upon the table, en bloc.

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

Mr. REID. Mr. President, we expect this resolution to be voted on by voice.

CELEBRATING THE LIFE AND ACHIEVEMENTS OF MILLARD FULLER

Mr. REID. I ask unanimous consent that the Senate now proceed to the immediate consideration of S. Res. 183.

The PRESIDING OFFICER. The clerk will report the resolution by title.

The assistant legislative clerk read as follows:

A resolution (S. Res. 183) celebrating the life and achievements of Millard Fuller, the founder of Habitat for Humanity.

There being no objection, the Senate proceeded to consider the resolution.

Mr. REID. I ask unanimous consent that the resolution be agreed to, the preamble be agreed to, and the motion to reconsider be laid upon the table.

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

The resolution (S. Res. 183) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 183

Whereas Millard Fuller was born on January 3, 1935, in the small cotton-mill town of Lanett, in Chambers County, Alabama, and would later graduate from Auburn University and the University of Alabama School of Law;

Whereas Millard Fuller became a self-made millionaire by the age of 29 and could have lived out the rest of his life in comfort, but instead he and his wife sold all of their possessions, donated the proceeds to the poor, and began searching for a new purpose for their lives;

Whereas Millard Fuller and his wife established Habitat for Humanity in Americus, Georgia, in 1976;

Whereas Habitat for Humanity has constructed more than 300,000 homes for 1,500,000 people and has a presence in all 50 States, the District of Columbia, Guam, Puerto Rico, and more than 90 countries around the world;

Whereas Habitat for Humanity's noteworthy accomplishments include building 263 houses across the United States in 1 week and massive rebuilding efforts in New Orleans following Hurricane Katrina;

Whereas in 2005, Millard Fuller established The Fuller Center for Housing, which works with local organizations to provide support and guidance to repair and build homes for impoverished individuals and is located in 24 States and 15 countries on 5 continents;

Whereas Millard Fuller provided 3 decades of leadership and service to Habitat for Humanity and The Fuller Center for Housing, committing his life to philanthropy and service to others while raising global concern for homelessness and poverty;

Whereas Millard Fuller was honored with over 50 honorary doctorate degrees by colleges and universities throughout the United States and was awarded the Presidential Medal of Freedom, the Nation's highest civilian honor, by President William Jefferson Clinton in 1996; and

Whereas Millard Fuller passed away on February 3, 2009, leaving behind a loving wife, a proud family, and a legacy that will extend far beyond his life: Now, therefore, be it

Resolved, That the Senate—

(1) celebrates the life and achievements of Millard Fuller;

(2) acknowledges the millions of people he and his organization have served and the inspiration he has given to so many; and

(3) encourages all the people of the United States to recognize and pay tribute to Millard Fuller's life by following the example of service that he set.

OFFERING CONDOLENCES TO THE FAMILY AND FRIENDS OF OFFICER STEPHEN T. JOHNS

Mr. REID. I ask unanimous consent the Senate now proceed to the immediate consideration of S. Res. 184.

The PRESIDING OFFICER. The clerk will report the resolution by title.

The assistant legislative clerk read as follows:

A resolution (S. Res. 184) offering deepest condolences to the family and friends of Officer Stephen T. Johns and calling on the leaders of all Nations to speak out against the manifestations of anti-Semitism, bigotry, and hatred.

There being no objection, the Senate proceeded to consider the resolution.

Mr. CARDIN. Mr. President, today I have submitted a resolution condemning yesterday's heinous, horrific act of violence at the U.S. Holocaust Memorial Museum.

I want to offer my deepest condolences to the family and friends of Officer Stephen Tyrone Johns. Officer Johns, of Temple Hills, in Prince George's County, MD, died in the line of duty. He ably served as a guard of the museum for 6 years. He was just 39 and leaves behind a grieving family. He gave his life to save the lives of numerous others. We must perpetually honor that ultimate sacrifice. I also want to commend all the staff of the U.S. Holocaust Memorial Museum and the authorities who responded to the scene for their bravery.

I have visited the Holocaust Memorial Museum many times with my family and friends. It is clear that the gunman's despicable rampage was intended to frighten and intimidate all people who care about equality and liberty.

I introduced this resolution to affirm my commitment to ending the bigotry and hatred that led to this heinous act. There is no place in our society for individuals who would harm or deny rights to others, especially based on religion, race, gender, or ethnic identity. It is heartening that each and every U.S. Senator has cosponsored this resolution.

Let there be no mistake about it, anti-Semitism and other hate crimes remain a pressing problem in our society. Anti-Semitism spawns from centuries of hatred, persecution, and the repeated attempts to destroy the Jewish people from their early days of slavery, through the Inquisition to the Holocaust and beyond. Hate crimes send a powerful message because they affect more than the individual victims; they are meant to intimidate and instill fear in entire groups of people. They create a sense of vulnerability and insecurity in others who may share characteristics with the victims. And that is precisely the intent of those who commit these crimes.

I am privileged to be chairman of the Helsinki Commission and a member of the Senate Judiciary Committee. In those capacities, and as a U.S. Senator generally, I am afforded numerous opportunities to speak out against the scourge of anti-Semitism, racial bigotry, and ethnic hatred worldwide. Part of the battle is to publicize the intolerance and hateful activity. As Oliver Wendell Holmes remarked,

The mind of a bigot is like the pupil of an eye. The more light you shine on it, the more it will contract.

This resolution is meant to be such a light and I am grateful that each and

every other Senator has seen fit to cosponsor it. We truly speak as one in our anguish at the tragic event yesterday and in our determination to root out its causes so that it will not be repeated.

Mr. BURRIS. Mr. President, it is with deep sadness that I rise to mark the death of security guard Stephen Tyrone Johns, whose senseless murder yesterday afternoon at the U.S. Holocaust Memorial Museum shocked us all.

My heart goes out to his family and friends on this tragic day and to his colleagues and fellow security officers who must return to a workplace that will surely never be quite the same.

Even as we mourn his death, we must commend Officer Johns, his colleagues, and all emergency personnel who responded quickly to prevent additional violence and protect the safety of museum visitors.

In the aftermath of this killing, how can we make sense of that which can only be described as senseless?

How can we comprehend the forces that would drive a person to such hatred, to such violence?

The simple truth is that most of us will never be able to fully understand this tragedy. We can only comfort one another as we struggle to confront a world in which Officer Johns has been taken from us far before his time.

The same incomprehensible hatred to which the Holocaust Memorial Museum bears silent witness.

We must honor the memory of Officer Johns by continuing the work he supported at the museum, preventing further violence, and standing tall in the face of intolerance.

It will not be easy to move on, but we can start by asking ourselves what we can do to prevent guns from falling into the hands of killers, to stop those who would commit hate crimes before more innocent people are slain. That is what we owe the legacy of Officer Stephen Tyrone Johns. That is how we can celebrate his memory, honor his sacrifice, and pay tribute to the spirit of his work and the continuing mission of the place where he died.

Mr. REID. I ask unanimous consent the resolution be agreed to, the preamble be agreed to, the motion to reconsider be laid upon the table, with no intervening action or debate, and any statements be printed in the RECORD.

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

The resolution (S. Res. 184) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 184

Whereas the United States Holocaust Memorial Museum was established as a ''living memorial that stimulates leaders and citizens to confront hatred, prevent genocide, promote human dignity, and strengthen democracy'';

Whereas, since the dedication of the United States Holocaust Memorial Museum in 1993, the United States Holocaust Memorial Museum has welcomed nearly 30,000,000 visitors, including more than 8,000,000 school children and 85 heads of state;

Whereas, on June 10, 2009, in an assault at the entrance of the United States Holocaust Memorial Museum, Officer Stephen T. Johns of Temple Hills, Maryland, was fatally wounded and died heroically in the line of duty;

Whereas, in the wake of this heinous act of violence, the people of the United States should renew the commitment to end bigotry, intolerance, and hatred; and

Whereas there is no place in the society of the United States for individuals who seek to harm or deny rights to others, especially based on religion, race, or ethnic identity: Now, therefore, be it

Resolved, That the Senate—

(1) offers deepest condolences to the family and friends of Officer Stephen T. Johns;

(2) commends the staff members of the United States Holocaust Memorial Museum for their courage and bravery in responding to the attack on June 10, 2009;

(3) condemns anti-Semitism and all forms of religious, ethnic, and racial bigotry;

(4) condemns acts of physical violence against, and harassment of, people based on race, gender, ethnicity, or religious affiliation; and

(5) calls on the leaders of all Nations to speak out against the manifestations of anti-Semitism, bigotry, and hatred.

ORDERS FOR MONDAY, JUNE 15, 2009

Mr. REID. Mr. President, I ask unanimous consent that when the Senate completes its business today, it adjourn until 1:45 p.m., Monday, June 15; that following the prayer and pledge, the Journal of proceedings be approved to date, the morning hour be deemed expired, the time for the two leaders be reserved for their use later in the day, and there be a period of morning business with Senators permitted to speak for up to 10 minutes each.

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

PROGRAM

Mr. REID. Mr. President, earlier today I filed a cloture motion on the motion to proceed to S. 1023, the travel promotion legislation. That cloture vote will occur prior to the recess for the caucus luncheons on Tuesday, June 16. As previously announced, there will be no rollcall votes next Monday.

ADJOURNMENT UNTIL MONDAY, JUNE 15, 2009, AT 1:45 P.M.

Mr. REID. Mr. President, if there is no further business to come before the Senate, I ask unanimous consent that it adjourn under the previous order.

There being no objection, the Senate, at 7:15 p.m., adjourned until Monday, June 15, 2009, at 1:45 p.m.

NOMINATIONS

Executive nominations received by the Senate:

FEDERAL ENERGY REGULATORY COMMISSION

JOHN R. NORRIS, OF THE DISTRICT OF COLUMBIA, TO BE A MEMBER OF THE FEDERAL ENERGY REGULATORY COMMISSION FOR THE REMAINDER OF THE TERM EXPIRING JUNE 30, 2012, VICE JOSEPH TIMOTHY KELLIHER, RESIGNED.

DEPARTMENT OF STATE

MICHAEL ANTHONY BATTLE, SR., OF GEORGIA, TO BE REPRESENTATIVE OF THE UNITED STATES OF AMERICA TO THE AFRICAN UNION, WITH THE RANK AND STATUS OF AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY.

DONALD STERNOFF BEYER, JR., OF VIRGINIA, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO SWITZERLAND, AND TO SERVE CONCURRENTLY AND WITHOUT ADDITIONAL COMPENSATION AS AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE PRINCIPALITY OF LIECHTENSTEIN.

MARTHA LARZELERE CAMPBELL, OF MICHIGAN, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF MINISTER-COUNSELOR, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE REPUBLIC OF THE MARSHALL ISLANDS.

DONALD HENRY GIPS, OF COLORADO, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE REPUBLIC OF SOUTH AFRICA.

GORDON GRAY, OF VIRGINIA, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF MINISTER-COUNSELOR, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE REPUBLIC OF TUNISIA.

ALFONSO E. LENHARDT, OF NEW YORK, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE UNITED REPUBLIC OF TANZANIA.

JOHN R. NAY, OF MICHIGAN, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF MINISTER-COUNSELOR, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE REPUBLIC OF SURINAME.

DANIEL M. ROONEY, OF PENNSYLVANIA, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO IRELAND.

RICHARD J. SCHMIERER, OF VIRGINIA, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF MINISTER-COUNSELOR, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE SULTANATE OF OMAN.

PAMELA JO HOWELL SLUTZ, OF TEXAS, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF MINISTER-COUNSELOR, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE REPUBLIC OF BURUNDI.

VINAI K. THUMMALAPALLY, OF COLORADO, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO BELIZE.

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

ROCCO LANDESMAN, OF NEW YORK, TO BE CHAIRPERSON OF THE NATIONAL ENDOWMENT FOR THE ARTS FOR A TERM OF FOUR YEARS, VICE DANA GIOIA, RESIGNED.

DEPARTMENT OF DEFENSE

JOSEPH W. WESTPHAL, OF NEW YORK, TO BE UNDER SECRETARY OF THE ARMY, VICE NELSON M. FORD.

IN THE AIR FORCE

THE FOLLOWING NAMED INDIVIDUALS FOR APPOINTMENT TO THE GRADES INDICATED IN THE REGULAR AIR FORCE UNDER TITLE 10, U.S.C., SECTION 531(A):

To be colonel

JOHN M. WIGHTMAN

To be major

MARK H. BAUMGARTNER
JOHN F. FREILER
SHANNON L. MCCAMEY

THE FOLLOWING NAMED INDIVIDUALS FOR APPOINTMENT TO THE GRADES INDICATED IN THE REGULAR AIR FORCE UNDER TITLE 10, U.S.C., SECTION 531(A):

To be lieutenant colonel

MICHELLE BONGIOVI

To be major

JOSEF F. DOENGES
JENNIFER A. KORKOSZ

THE FOLLOWING NAMED INDIVIDUALS FOR APPOINTMENT TO THE GRADE INDICATED IN THE REGULAR AIR FORCE UNDER TITLE 10, U.S.C., SECTION 531(A):

To be major

SCOTT M. BAKER
MARIO L. REPETA
DEE A. WEED

IN THE ARMY

THE FOLLOWING NAMED INDIVIDUAL FOR REGULAR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES ARMY MEDICAL CORPS UNDER TITLE 10, U.S.C., SECTIONS 531 AND 3064:

To be lieutenant colonel

MICHAEL L. STEINBERG

THE FOLLOWING NAMED INDIVIDUAL FOR REGULAR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES ARMY MEDICAL SERVICE CORPS UNDER TITLE 10, U.S.C., SECTIONS 531 AND 3064:

To be major

PAUL W. MAETZOLD

THE FOLLOWING NAMED INDIVIDUALS FOR REGULAR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES ARMY NURSE CORPS UNDER TITLE 10, U.S.C., SECTIONS 531 AND 3064:

To be major

SHERYL L. DACY
JAMES M. LEITH

THE FOLLOWING NAMED ARMY NATIONAL GUARD OF THE UNITED STATES OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE RESERVE OF THE ARMY UNDER TITLE 10, U.S.C., SECTIONS 12203 AND 12211:

To be colonel

JAMES R. FINLEY
EDWARD E. HILDRETH III
MARK A. STRYKER
CRAIG M. WEAVER

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES ARMY AS CHAPLAINS UNDER TITLE 10, U.S.C., SECTIONS 624 AND 3064:

To be lieutenant colonel

OSCAR T. ARAUCO
DAVID S. BAUM
KEITH N. CROOM
JIMMY C. DAVIS, JR.
ALBERT L. DOWNING
BARTH G. EDISON
CHARLES M. FIELDS
STEVEN R. GEORGE
WILLIAM E. GODWINSTREMLER
BILLY N. HAWKINS, JR.
TERRENCE E. HAYES
CAROL D. HIGHSMITH
WALTER G. HOSKINS
TIMOTHY L. HUBBS
YVONNE C. HUDSON
HARRY C. HUEY, JR.
JAY S. JOHNS III
NORMAN W. JONES
KLON K. KITCHEN, JR.
MICHAEL T. KLEIN
SAMUEL S. LEE
SUK J. LEE
TRENTON E. LEWIS
PEDRO R. MARTINEZ
ANTONIO J. MCELROY
JOHN J. MURPHY
KIM M. NORWOOD
JOHN S. PECK
DOUGLAS L. PRENTICE
ALLEN L. PUNDT
KWON PYO
JOHN H. RASMUSSEN
TERRY L. SIMMONS
KENNETH R. SORENSON
TERRENCE M. WALSH
ROBERT E. WICHMAN
KENNETH R. WILLIAMS, JR.
MICHAEL D. WOOD
D070807

THE FOLLOWING NAMED OFFICERS FOR REGULAR APPOINTMENT TO THE GRADES INDICATED IN THE UNITED STATES ARMY UNDER TITLE 10, U.S.C., SECTION 531:

To be lieutenant colonel

DENNIS K. BENNETT
MICHAEL R. BRANTLEY
CHERYL L. CAVES
LAWRENCE J. CRAFTS
AUSTIN S. HAMNER
JEROME E. KUCZERO
SHERMAN S. LACOST
DONALD S. NELSON
JANINA T. REYES
LONNIE E. SLADE
WILLIAM R. SPENGLER

To be major

JEREMIAH A. AESCHLEMAN
ERIK M. BAUER
RICHARD J. BROWN
RUSSELL B. BROWNFIELD
SHAWN E. CARPENTER
ISABEL M. CASSLE
EDWARD G. DOUGLAS
MONTGOMERY C. ERFOURTH
NATHAN M. GRAY
CARLOS I. MARTINEZ
PAUL NAVAS III
PHILIP R. RUSIECKI
RACHEL D. SULLIVAN
JAMES C. SULLIVAN
MICHAEL F. TREMBLAY
JOSE M. VARGAS

THE FOLLOWING NAMED OFFICERS FOR REGULAR APPOINTMENT IN THE GRADES INDICATED IN THE UNITED STATES ARMY UNDER TITLE 10, U.S.C., SECTION 531:

To be colonel

ERNEST T. FORREST
EDWARD B. MCKEE
MARK L. VANDRIE

To be lieutenant colonel

ROBERT A. ALBINO
BRIAN D. ALLEN
JONATHAN E. ALLEN
STEVEN ANGERTHAL
NEIL C. ARNOLD
DOUGLAS J. BELL
DOUGLAS B. BELLET
MARC B. CAROLAN
CHARLES R. CHAPPELL
WILLIE P. COLLINS
DAVID C. COOK
CHARLES F. CORSON
JESSE T. CRUZ
JAMES H. DONAHUE
TIMOTHY A. DOYLE
ANTHONY B. DUCKSWORTH
MALCOLM E. EARLES
JEFFREY L. EDMONDS
DAVID A. FAHY
FRED V. FLYNN
DAVID W. FREEMAN
IVA R. GRAHEK
MICHAEL HAMPTON
THOMAS M. HEBERT
DAVID E. HICKEY
PLINT W. HICKMAN
BASIL R. HOWARD
FOSTER E. HUDSON
PAUL H. JAMES
MARY C. JOHANNS
JOHN K. JOHNSON
ROBERT V. KENNINGTON
JEREMY S. KOTKIN
JEFFREY J. KYBURZ
MICHAEL O. LALLAS
EDWARD P. LOCKE
TERRY O. MARBURY
FRANK M. MARTIN
RENE C. MARTINEZ
MICHAEL E. METELKO
EDWIN MOTT
BRIDGET C. NIEHUS
MORANT PITTMAN
WILLIAM A. RASKIN
DAVID F. RITTER
EUGENIO R. RIVERA
RICHARD A. RODRIGUES
BONNIE F. ROGERS
RICHARD A. SANDERS
CHARLES G. SIMPSON
STEVEN M. SPANGLER
STEPHEN F. STCLAIR
DANIEL M. SWANSON
JERRY D. THOMAS
DANIEL R. VALENTE
VERNON N. VANDYNE
FAHNESTOCK C. VON
DONALD S. WALKER
TERESA A. WARDELL
JOSEPH W. WEIGMAN
MICHAEL L. WILLIAMS

To be major

KEVIN J. AGEN
LAWRENCE W. BITTNER
ANGELA L. BOWIE
SHAWN L. BROWN
PETER C. CHEN
EDWARD V. CHESSER
SHANE A. CIPOLLA
JAMES G. CLARK
ANDREW W. COLLINS
TERENCE J. CONNOLLY
PHILIP C. COSTLEY
CLIFTON B. CRIBB
SCOTT A. CRUMP
RAFAEL CRUZGARCIA
MICHELLE A. DAILING
SCOTT L. DOWNING
TIMOTHY A. DOYLE
MICHAEL R. EASON
MONTGOMERY C. ERFOURTH
ADAM T. FAIN
GUY A. GASSER
ARTHUR G. GIRALDI
GARY L. GOOD
MICHAEL K. GOODWIN
MICHAEL K. GRISWOLD
KRISJON A. HANSON
MICHAEL T. HEATON
MICHAEL V. HICKMAN
DELANE L. HOLLIS
SEUNGHO HONG
EDWARD K. HOOKS
TREVOR W. HOUGH
KENGI A. HUTCHINS
STEVEN HUTCHISON
TODD A. JOHNSON
TINA R. JONESFAISON
GAIDRA U. JOSEPH
LLOYD D. JUNGHANS
THOMAS D. KELLEY
LARRY D. KIMBRELL
JEFFREY T. LAKEY
STUART E. LAWRENCE
TODD M. LEITSCHUH
AARON M. LEONARD
BRIAN A. LESIAK
LINDA K. LEWIS
ARTURO Z. LINCON
JOHN C. LING
LISA J. LIVINGOOD
CHRISTOPHER S. LUTZKANIN
STEVEN L. MAKARSKY
PATRICK L. MALLETT
ALICIA M. MASSON
NATHAN E. MCCAULEY
CAROL A. MCCLELLAND
WAYNE E. MCCORMICK
JOHN K. MCGEE
DETRICE D. MOSBY
JOHN C. MULHALL
MARC H. NGUYEN
PAUL NIX
ALI N. OMUR
SHERRILYN W. ONEAL
STEPHEN W. OWEN
MATTHEW D. PEDERSEN
RICHARD S. PEEKE
DAVID L. POSTON
PETER G. QUEYREL
MARCUS R. REINHART
DONOVAN A. RICKEL
WILLIE R. ROSEMAN
ERIC F. SAUER
LORNE V. SERPA
DAVID A. SETTJE
ERIC A. SHAW
DANA L. SMITH
JOHN E. SMITH
JENNIFER J. SMITHHEYS
JAMES T. SOPER
GREGORY C. SPEAKER
MARSHALL L. STEPHENSON
GRANT W. STOEBNER
CHRISTOPHER O. STOECKLIN
BRET A. STOVALL
WILLIAM E. SUMNER
MICHAEL D. TAYLOR
MICHAEL S. TOKAR
JOSE M. TORRES
TIMOTHY J. TREAT
JOHN F. VANSTEENBURGH
GILBERTO R. VAZQUEZ
TERRY R. VEENEMAN
MARK A. VERDI
ANGELA Y. WALKER
PAUL M. WHITE
THEODORE O. WHITE
LILIETH R. WHYTE
TROY H. WINCAPAW
TERRY A. WINDMILLER
DEAN W. WOOD
WILLIAM H. WOOD
WALTON D. ZIMMERMAN