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House of Representatives

The House was not in session today. Its next meeting will be held on Tuesday, November 16, 2004, at 2 p.m.

Senate

SUNDAY, OCTOBER 10, 2004

The Senate met at 10:30 a.m. and was called to order by the President pro tempore (Mr. STEVENS).

PRAYER

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

Let us pray.

Eternal Lord God, You rule the Earth with goodness and Your mercies sustain us. We praise You on weekdays or weekends, for each heartbeat is a gift from Your bounty. Help us to so live that You will come and find us ready, because our hearts are at peace with You. Bless our legislative Members. Enlighten and illumine them that they may know You and Your precepts. Touch their lips that they may speak no words that grieve You. Give them hearts that are willing to serve. Comfort them in sadness and refresh them when fatigued. Strengthen them when tempted and guide them when they are perplexed. Whatever happens, remind us that You have traveled the road before us and enable us to live victoriously. We pray in Your Holy Name. Amen.

PLEDGE OF ALLEGIANCE

The PRESIDENT pro tempore 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.

RECOGNITION OF MAJORITY LEADER

The PRESIDENT pro tempore. The majority leader is recognized.

SCHEDULE

Mr. FRIST. Mr. President, I welcome everybody this morning. It is unusual to have to meet on a Sunday, but in order to complete the Nation's business, we are doing just that. I know that it has interrupted a number of people's schedules, but we are forced to do so in order to complete business which does affect the safety and security of the American people.

This morning, we will continue debate on the conference report to accompany the FSC, or JOBS bill. We have controlled debate time until the cloture vote, which will occur at 1 p.m. today. If Senators desire to debate the conference report prior to that cloture vote, there will be a limited amount of time and therefore they should notify us early this morning of their request. We hope and expect cloture to be invoked at 1 today. If invoked, we would hope the Senate would then act expeditiously on the conference report.

As a reminder, not that many hours ago but when we closed last night, I filed cloture motions on the two conference reports to accompany the Military Construction appropriations bill and the Homeland Security appropriations bill. As I said last night, I regret having to file those cloture motions. However, there was an objection from the other side of the aisle. I understand the Homeland Security appropriations bill passed unanimously in the House of Representatives. I know of absolutely no issues in that conference report to cause this delay. Therefore, once again, I ask my colleagues to take that into consideration so we can proceed on this very important Homeland Security appropriations bill. That is money to be invested in our security and safety and it is time for us to act.

It is unfortunate that because of the action on the other side of the aisle we are holding up money that will be used to further secure this country.

Having said that, I hope the Members on the other side will rethink this objection and allow us to proceed. I further hope that we can get the disaster package passed in short order as well. It is time to pass this package. We are talking about money to respond to emergencies, to drought, to hurricanes. We are ready to deliver all of that money if we can remove the objections from the other side of the aisle.

Again, I remind my colleagues that the vote will occur at 1 on the cloture motion on FSC/ETI.

RESERVATION OF LEADER TIME

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

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

SUPPORTING GOALS OF RED RIBBON WEEK

LIGHTS ON AFTERSCHOOL DAY

NATIONAL CHILDHOOD LEAD POISONING PREVENTION WEEK

CONGRATULATING SPACESHIPONE TEAM FOR ACHIEVING HISTORIC MILESTONE IN HUMAN SPACE FLIGHT

AMERICAN MUSIC MONTH

HONORING YOUNG VICTIMS OF SIXTEENTH STREET BAPTIST CHURCH BOMBING

NATIONAL CHARACTER COUNTS WEEK

RECOGNIZING SIGNIFICANT ACHIEVEMENTS OF PEOPLE AND GOVERNMENT OF AFGHANISTAN SINCE EMERGENCY LOYA JIRGA WAS HELD JUNE 2002 IN ESTABLISHING FOUNDATION AND MEANS TO HOLD PRESIDENTIAL ELECTIONS ON OCTOBER 9, 2004

Mr. FRIST. Mr. President, I ask unanimous consent that the Senate now proceed to the consideration of S. Res. 455 through S. Res. 462, which were introduced earlier today, en bloc.

The PRESIDENT pro tempore. Is there objection?

Ms. LANDRIEU. Mr. President, reserving the right to object, I respectfully wish to raise the issue this morning to the leader because I know he has been trying very hard, along with our leader, Senator REID, to move this process along. I am here this morning because I want the leader to know that I want to work with him to do that. Since Wednesday night I have had, along with other Senators, an objection to the Guard and National Reserve being left out of the tax bill.

My question is to the leader, and I know he wants to move forward, but with the chairman of the Finance Committee, could he at least give some indication of his willingness to work through this day for the next couple of hours to see if we can take that matter up by voice vote, taking no time for debate, because it has been cleared? Would that be possible for him to consider as we move through the day?

Mr. FRIST. Mr. President, I am happy to consider it, as we have been considering it this morning, last night, and yesterday. We will continue to work with the Senator. There are no commitments to be made at this point because there are objections.

The PRESIDENT pro tempore. Is there objection to the request?

Ms. LANDRIEU. Reserving the right to object, I am prepared to not object to this request at this time this morning, but I want to let the leadership know, respectfully, the Republican leadership and the Democratic leadership, that I am prepared to stay here today and object throughout the day if this situation cannot be resolved some way on behalf of the Guard and Reserve officers. But I will not object at this time.

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

The clerk will report the titles of the resolutions en bloc.

The assistant legislative clerk read as follows:

A resolution (S. Res. 455) supporting the goals of Red Ribbon Week.

A resolution (S. Res. 456) designating October 14, 2004, as Lights on Afterschool Day.

A resolution (S. Res. 457) designating the week of October 24, 2004, through October 30, 2004, as National Childhood Lead Poisoning Prevention Week.

A resolution (S. Res. 458) congratulating the SpaceShipOne team for achieving a historic milestone in human space flight.

A resolution (S. Res. 459) designating November 2004 as American Music Month to celebrate and honor music performance, education, and scholarship in the United States.

A resolution (S. Res. 460) honoring the young victims of the Sixteenth Street Baptist Church bombing, recognizing the historical significance of the tragic event, and commending the efforts of law enforcement personnel to bring the perpetrators of this crime to justice on the occasion of its 40th anniversary.

A resolution (S. Res. 461) designating the week beginning October 17, 2004, as National Character Counts Week.

A resolution (S. Res. 462) recognizing the significant achievements of the people and Government of Afghanistan since the Emergency Loya Jirga was held in June 2002 in establishing the foundation and means to hold presidential elections on October 9, 2004.

There being no objection, the Senate proceeded to consider the resolutions, en bloc.

S. RES. 455

Ms. MURKOWSKI. Mr. President, I rise today in support of this resolution that commemorates the annual Red Ribbon Week. The purpose of Red Ribbon Week is to educate and advocate a commitment to a drug-free life style. Red Ribbon Week also remembers the contribution of one soldier in the war against drugs, DEA Special Agent Enrique ''Kiki'' Camerena. I am honored to seek the Senate's recognition and support again for the Annual Red Ribbon Campaign.

In my State of Alaska, Red Ribbon Week will be a Statewide celebration involving thousands of school children and those people and organizations who care about the welfare of our children and community. On October 22, the City of Anchorage of will celebrate with a series of Red Ribbon events coordinating with the Alaska Federation of Natives, the Alaska National Guard, the Alaska State Troopers, the Mayor of Anchorage, the Boys & Girls Clubs of Alaska, many PTA groups and many others across the community.

Throughout the week, Alaskans will be encouraged to show gratitude for all the lives that remain drug free, pledge to live a safe and drug-free life and remember those we have lost in the fight against drugs.

The Red Ribbon Week Campaign was started in 1988 by the Federation of Parents. It was organized as a 8-day event and was then chaired by President and Mrs. Reagan. The event began as a tribute to DEA Special Agent Enrique ''Kiki'' Camerena who was kidnapped, tortured, and murdered by drug traffickers in 1985. I suggest to those who advocate that drugs are a victimless crime talk to the widow and children of Agent Camerena. His sons, Erik and Enrique, Jr. continue to honor their father and work to help children and families that are victims of crimes. His death has become symbolic of the cost of illicit drugs.

The Red Ribbon which we put on is a symbol of zero tolerance for illegal drug use and a commitment to drug abuse prevention. The ribbon will be worn or displayed in the up coming Red Ribbon Week by millions of Americans in an act of unity and remembrance of Agent ''Kiki'' Camerena.

Illicit drugs, the abuse of drugs, and the business of illegal drugs are not a private matter. Drugs harm children. Drugs harm our communities. Illegal drugs only facilitate dependency, addiction and the breakdown of the families.

Alaska has the highest rates of domestic violence in the Nation and one of the highest rates of sexual assault in the Nation. According to the Anchorage Police Department in almost 80 percent of these cases alcohol and drugs were contributing factors to these crimes. In one rural area of Alaska, 97 percent of all the domestic cases involve drugs or alcohol.

We must encourage our children to make better choices by making the same commitment in our own lives. We as parents and leaders must set good examples.

Our children are growing up in a community that continues to send confusing and mixed signals. Our children are confronting difficult choices on a continuous basis. The popular idols in the media, the movies, television, and music often encourage them to make the wrong decisions. The Red Ribbon Campaign is one effort to help our children make the right decisions.

I urge my colleagues to join me in passing this resolution to help illustrate the Senate's commitment to ensure our children are safe and to encourage all people to live a healthy drug-free life.

S. RES. 456

Ms. STABENOW. Mr. President, I rise today in support of designating October 14, 2004 as Lights On Afterschool Day. Next Thursday will serve as a national celebration of afterschool programming, a day to celebrate the initiatives that offer quality afterschool programs in the lives of children, their families and their communities. On

this day, communities around our Nation will engage in innovative afterschool programs and activities to ensure that the lights stay on and the doors stay open for all children after school.

Quality afterschool programs provide safe, engaging and fun learning experiences to help children and youth develop their social, emotional, physical, cultural and academic skills. Such programs also support working families by ensuring their children are safe and productive after the regular school day ends. Afterschool programs also build stronger communities by involving our students, parents, business leaders and adult volunteers in the lives of our young people, thereby promoting positive relationships among children, youth, families and adults. The welfare of our children is also advanced because of the engagement of the families, schools and diverse community partners.

More than 28 million children in the United States have parents who work outside the home, and 14.3 million of them have no place to go after school. In addition, many afterschool programs across the country are facing funding shortfalls so severe that they are being forced to close their doors and turn off their lights.

I implore my colleagues to support designating October 14, 2004, as Lights On Afterschool Day, and ask the President to issue a proclamation calling on the communities of this Nation to engage in innovative afterschool programs and activities for all children after school.

S. RES. 457

Mr. REED. Mr. President, today I, Senators COLLINS, MIKULSKI, BOND and over 35 cosponsors are supporting a resolution designating the week of October 24–30, 2004 as National Childhood Lead Poisoning Prevention Week.

The need to combat the severe threat of lead poisoning to our children's health has never been greater. It is estimated that 25 million homes nationwide have lead hazards. Many of those homes were built before 1950 when paint contained as much as 50 percent lead. Peeling chips and dust from deteriorating lead-based paint are the most common sources of childhood lead poisoning. According to the latest national health estimates, nearly half a million children under the age of 6 suffer from lead poisoning, with these children eight times more likely to come from low-income working families than wealthy families.

Unfortunately, except for severely poisoned children, there is no medical treatment for this disease. Even then, for severely poisoned children treatment may only reduce the level of lead present in the body, not reverse the harm already caused. Research shows that children with elevated blood lead levels are seven times more likely to drop out of high school and six times more likely to have reading disabilities. In addition, it costs an average of $10,000 more a year to educate a lead poisoned child.

We need to find the will and the resources to eradicate childhood lead poisoning in this country. Designating the week of October 24, 2004 through October 30, 2004 as ''National Childhood Lead Poisoning Prevention Week'' will help shine a light on this terrible problem, energize the Federal Government into playing a more active role in eliminating, and help improve local, State and Federal cooperation on this issue. With concerted effort, we can eliminate the tragedy of childhood lead poisoning so that no family in our country has to live in unsafe housing. I am committed to addressing this crisis, and I believe this resolution can encourage more communities to focus on solving this terrible problem.

S. RES. 458

Mr. BINGAMAN. Mr. President, October 4, 2004, marked a historic milestone in human space flight. On that day, SpaceShipOne became the first privately funded space vehicle to escape from and safely return to Earth twice within 2 weeks, thereby winning the Ansari X Prize. The craft also broke the record for maximum altitude achieved by a plane, which was set by the X–15 in 1963. This is a truly landmark achievement, and its designer, Burt Rutan, as well as its test pilots Mike Melvill and Brian Binnie, are to be commended along with the rest of the SpaceShipOne team for their extraordinary courage and ingenuity.

The Ansari X Prize was established to jumpstart the space tourism industry, to inspire and educate students, to focus public attention and investment capital on this new business frontier, and to challenge explorers and rocket scientists around the world. It has already achieved each of these goals, and without a penny of Government funding. The $10 million prize was modeled after the $25,000 Orteig Prize won by transatlantic aviator and American legend Charles Lindbergh in 1927. It should be noted that the Defense Advanced Research Projects Agency, DARPA, uses a similar prize model to accomplish many of its mission-oriented breakthroughs. So perhaps given the success of this approach in unleashing the potential of America's brightest minds, we should use it to tackle other areas of research critical to our nation's future as well.

As for the cost, one of this competition's most amazing results is the potential of a dramatically reduced price tag for human space flight. The total investment in SpaceShipOne was reportedly just over $20 million from the drawing board to yesterday's success, which is currently far less than the cost of a single Government-sponsored human mission. More affordable technology will lead to applications that could only be imagined until now.

I eagerly look forward to the annual competition for an X Prize Cup, which begins in 2006 at White Sands Missile Range outside Las Cruces in my home State of New Mexico. This competition will build on the success of the original X Prize to foster the early evolution of commercial human space flight, and make the dream of space travel a reality that anyone can achieve.

To commemorate the tremendous talent and vision demonstrated by the SpaceShipOne team, today Senators MCCAIN, HOLLINGS, BROWNBACK, DOMENICI and I are introducing this Senate resolution. I hope that other Members of the Senate will join us in honoring their remarkable accomplishments.

S. RES. 459

Mr. DURBIN. Mr. President, I rise today in support of the resolution with my colleague, Senator LAMAR ALEXANDER, designating November, 2004, as American Music Month.

Of all the creative and artistic contributions our Nation has offered to the world in its short history, our music is perhaps the most definitively American aspect of our culture.

America's vast and profound repertoire of music expresses our country's vital cultural and social identities and empowers us to preserve our past and pursue our future; it transforms our wondrous and harsh experiences into potent messages that freely declare democratic choice and freedom of expression; it inspires social justice, enlivens collective action, and reflects our Nation's dynamic social movements.

Senator ALEXANDER and I ask our colleagues to join with us in recognizing American musical heritage as an expression of this country's democratic freedoms and indomitable spirit.

Several prominent music organizations and their members have been celebrating American Music Month in November for many years. The contributions of these groups, in music education, preservation, scholarship, promotion and performance, should be highlighted during American Music Month. They help us experience and appreciate our Nation's musical heritage.

The Society for American Music, first named in honor of Oscar G.T. Sonneck, early director of the music division in the Library of Congress and pioneer scholar of American music, strives to stimulate the appreciation, performance, creation, and study of American music and its cultures in all their diversity.

The MENC: The National Association for Music Education was established in 1907 to advance music education by encouraging the study and making of music to celebrate and preserve our cultural heritages. Today it includes a membership of more than 100,000 active music teachers, university faculty and researchers, college students preparing to be teachers, high school honor society members, and music afficianados.

The College Music Society actively promotes music teaching and learning, music research and dialogue, and diversity and interdisciplinary interaction among cultural institutions.

The Music Library Association provides a forum for study and action on issues that affect music libraries and assures that users of music materials are well served by their libraries.

The American Musicological Society was established in 1934 as a body of scholars devoted to the advancement of research in the various fields of music as a branch of learning and scholarship.

The organization Americans for the Arts, created in 1996 as a result of the merger of the National Assembly of Local Arts Agencies and the American Council for the Arts, is dedicated to representing and serving local communities and creating opportunities for every American to participate in and appreciate all forms of the arts.

The United States Marine Band was established by an Act of Congress in 1798 and represents America's oldest professional musical organization. Its primary mission is to provide music for the President of the United States and the Commandant of the Marine Corps. November 2004 marks the sesquicentennial of the birth of John Philip Sousa, director of the Marine Band from 1880 to 1892. Sousa brought ''The President's Own'' to unprecedented levels of excellence and shaped the band into a world-famous musical organization. The band continues to maintain Sousa's standard of excellence for the performance of America music today, through White House performances, public concerts, and national tours.

In June of 2004, the Illinois House of Representatives adopted a measure similar to that which we offer today. Approval by the Senate will be an important step toward the national recognition of this month of celebration. I urge the Senate to pass this resolution in a timely fashion so that we can properly honor American Music in all its forms.

S. RES. 461

Mr. DOMENICI. Mr. President, I rise today to support, with my friend Senator DODD this resolution regarding National Character Counts Week.'' Our resolution says the week of October 17th of this year will be known across the country as National Character Counts Week.

Nearly a century ago President Theodore Roosevelt said the following about character:

Character, in the long run, is the decisive factor in the life of an individual and of nations alike.

I submit that character truly does transcend time as well as religious, cultural, political, and socio-economic barriers. I believe our country is having a renewed focus on character and this sends a wonderful message to Americans, and will help those of us involved in character education reinvigorate our efforts to get communities and schools involved.

I say that because a number of years ago we started this approach to character education called ''character counts.'' Senators NUNN, DODD and I first submitted the resolution that has now passed the Senate on innumerable occasions. The resolution simply declares that for all of America, one week during the year will be known as National Character Counts Week.

Frankly, we hear a lot about how we should help our young people growing up in this often difficult society. However, I believe the key is finding those ideas and programs that work. We all understand that there are certain people who have the primary responsibility to care for our children like mothers, fathers, siblings, and grandparents. We are not in any way talking about negating that responsibility of raising a child with good values. However, we have found the teachers in our schools have been yearning for something they could teach our children that for some reason had been eliminated from both the public and private school agenda curriculum. It is sometimes referred to as character education.

I choose to speak about the ''character counts'' program that is being used in many public schools in our country, and certainly in my State of New Mexico where teachers embrace the six pillars of character. The values comprising the six pillars are everyday concepts that Americans across this land wish their children would have and hope America will keep. They are simply: trustworthiness, respect, responsibility, fairness, caring, and citizenship. They transcend political and social barriers and are central to the ideals on which this Nation was built.

I could speak for hours about the 200,000 New Mexico schoolchildren in public, private and parochial schools learning about good character. About 90 percent of the grade school children, and a significant portion of the others, are now participating in character education programs that simply and profoundly bring them into contact with each of these Pillars one month at a time.

So if one walks the halls of a grade school in Albuquerque, they might see a sign outside that says, ''This Is Responsibility Month.'' And all the young people will be discussing the concept of responsibility in their classrooms, and they will put up posters saying, ''responsibility counts.'' At the end of that month they may have an assembly where responsibility will be discussed by all the kids, and awards will be given to those demonstrating the most responsibility. The next month it might be ''respect.'' The month after that it might be ''caring.''

I could go on for quite some time talking about ''character counts'' in New Mexico. The bottom line is that I believe it is working in New Mexico and other parts of the country. Consequently, I think we need to salute the efforts already underway and encourage even more character education across our country.

So today, Senator DODD and I are here to submit a resolution to accomplish just that and hopefully our renewed effort will bring together even more communities to ensure that character education is a part of every child's life.

I hope that my colleagues will support this effort.

Mr. DODD. Mr. President. today I join my friend and colleague from New Mexico, Senator DOMENICI, in support of a resolution declaring next week National Character Counts Week. Senator DEMENICI and I have worked together for many years on the issue of character education and hope that by designating a special week to this cause, students and teachers will come together to participate in character building activities in their schools. In 1994, Senator DOMENICI and I established the Partnerships in Character Education Pilot Project and have worked regularly since then to commemorate National Character Counts Week. I am pleased that we are continuing our efforts today to help expand States' and schools' abilities to make character education a central part of every child's education.

Our schools may be built with the bricks of English, math and science, but character education certainly is the mortar. Character education means teaching students about such qualities as caring, citizenship, fairness, respect, responsibility, trustworthiness, and other qualities that their community values.

Character education provides students a context within which to learn. If we view education simply as the imparting of knowledge to our children, then we will not only miss an opportunity, but will jeopardize our future. Character education is not a separate subject, but part of a seamless garment of learning. Taking this to heart, teachers and administrators at the Ivy Drive Elementary School in Bristol, CT, incorporate the fundamentals of character education into a school wide program. In its eighth year, the Character, Assets & Resiliency Education, C.A.R.E, program integrates several pillars of character into daily lessons and special events. This year Ivy Drive chose ''swimming to success'' as their theme to build on the previous year's ''lets go fishing'' giving each child the opportunity to focus on the fundamentals of character education.

Two Hartford, CT Elementary Schools, Burr Elementary and Kennelly Elementary, recently demonstrated outstanding community service through their character education program. Supervised by their teachers, students raised close to $1000 in financial support for the family of a fifth grade student who died of leukemia. In doing so, they implemented the character pillars of caring, citizenship, and diligence.

The New Haven Public Schools recently implemented a 4-year character education curriculum within a pre-existing social development program. Grades K–3 experience the ''incredible

years'' curriculum, focusing on social skills and peer relations through service learning, community outreach, and teacher and parent training. A total of 700 character related lessons were taught in 2003–2004. Community service projects included visits to the central firehouse, local animal shelter and elderly care home.

Character education programs work. Schools across the country that have adopted strong character education programs report better student performance, fewer discipline problems, and increased student involvement within the community. Children want direction, they want to be taught right from wrong. The American public wants character education in our schools, too. Studies show that about 90 percent of Americans support schools teaching character education.

As all education policy should be, character education is bi-partisan. This year we have 31 cosponsors to our resolution, cosponsors on both sides of the aisle. Character education is also actively supported by a number of national education and youth organizations including 4–H and the Boys and Girls Clubs of America. Character education can and is being incorporated into children's lives in and outside of the classroom.

This measure provides a helping hand to our schools and communities to ensure those children's future are bright and filled with opportunities and success. Character education not only cultivates minds, it nurtures hearts. While our children may be one quarter of our population, they are 100 percent of our future.

S. RES. 462

Mr. HAGEL. Mr. President, I rise today in support of a resolution recognizing the landmark Presidential elections that took place in Afghanistan on Saturday, October 9, 2004.

My colleagues Senators LUGAR, BIDEN, LEAHY, MCCAIN, SUNUNU and DODD join me as original co-sponsors of this resolution.

The Government and people of Afghanistan deserve our praise and recognition for their achievements since the emergency Loya Jirga of June 2002. The process leading to this historic election has not always been easy. Warlords and Taliban members have sought to intimidate voters and disrupt the process. But the government of President Hamid Karzai and the people of Afghanistan have not been deterred. More than 10.5 million Afghan citizens have been reported registered to vote, reflecting the courage and commitment of Afghans to a democratic future. Over 40 percent of those registered are women.

The Afghanistan Freedom Support Act of 2002, P.L. 107–327, expressed the U.S. Congress's support for the development of democratic institutions and a fully representative government in Afghanistan that respects religious freedom and the rights of women. The Presidential election this week is a critical benchmark for America's commitment to a long-term partnership with Afghanistan for responsible governance and a more peaceful future.

America's interests in Afghanistan are linked to our wider regional objectives in the war on terrorism, and in promoting security and more open political and economic systems throughout the greater Middle East and Central Asia.

Presidnet Bush said on June 15, 2004, that ''the world and the United States stand with [the people of Afghanistan] as partners in their quest for peace and prosperity and stability and democracy.''

I ask the Senate to recognize the historic achievement of the Afghan people in holding Presidential elections this past Saturday, and to join the co-sponsors of this resolution and me in expressing our continued support for the people of Afghanistan.

Mr. FRIST. I ask unanimous consent that the resolutions be agreed; the preambles be agreed to; the motions to reconsider be laid upon the table, en bloc.

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

The resolutions (S. Res. 455 through S. Res. 462) were agreed to, en bloc.

The preambles were agreed to, en bloc.

The resolutions, with their preambles, read as follows:

S. RES. 455

Whereas the Governors and Attorneys General of the States, the National Family Partnership, Parent Teacher Associations, Boys and Girls Clubs of America, and more than 100 other organizations throughout the United States annually cosponsor Red Ribbon Week during the week of October 23 through October 31;

Whereas a purpose of the Red Ribbon Campaign is to commemorate the service of Enrique ''Kiki'' Camarena, a Drug Enforcement Administration special agent who died in the line of duty while engaged in the battle against illicit drugs;

Whereas Red Ribbon Week is nationally recognized and celebrated, helping to preserve Special Agent Camarena's memory and further the cause for which he gave his life;

Whereas the objective of Red Ribbon Week is to promote drug-free communities through drug prevention efforts, education, parental involvement, and communitywide support;

Whereas drug and alcohol abuse contributes to domestic violence and sexual assaults, and places the lives of children at risk;

Whereas drug abuse is one of the major challenges our Nation faces in securing a safe and healthy future for our families and children; and

Whereas parents, youth, schools, businesses, law enforcement agencies, religious institutions, service organizations, senior citizens, medical and military personnel, sports teams, and individuals throughout the United States demonstrate their commitment to drug-free, healthy lifestyles by wearing and displaying red ribbons during this weeklong celebration: Now, therefore, be it

Resolved, That the Senate—

(1) supports the goals of Red Ribbon Week;

(2) encourages children and teens to choose to live a drug-free life; and

(3) encourages all people of the United States to promote drug-free communities and to participate in drug prevention activities to show support for healthy, productive, drug-free lifestyles.

S. RES. 456

Whereas quality afterschool programs provide safe, challenging, engaging, and fun learning experiences to help children and youth develop their social, emotional, physical, cultural, and academic skills;

Whereas quality afterschool programs support working families by ensuring their children are safe and productive after the regular school day ends;

Whereas quality afterschool programs build stronger communities by involving students, parents, business leaders, and adult volunteers in the lives of young people, thereby promoting positive relationships among children, youth, families, and adults;

Whereas quality afterschool programs engage families, schools, and diverse community partners in advancing the welfare of children;

Whereas ''Lights On Afterschool!'', a national celebration of afterschool programs on October 14, 2004, promotes the critical importance of quality afterschool programs in the lives of children, their families, and their communities;

Whereas more than 28,000,000 children in the United States have parents who work outside the home, and 14,300,000 children have no place to go after school; and

Whereas many afterschool programs across the country are facing funding shortfalls so severe that they are forced to close their doors and turn off their lights: Now, therefore, be it

Resolved, That the Senate—

(1) designates October 14, 2004, as ''Lights On Afterschool! Day''; and

(2) requests that the President issue a proclamation calling on the communities of the Nation to engage in innovative afterschool programs and activities that ensure the lights stay on and the doors stay open for all children after school.

S. RES. 457

Whereas lead poisoning is a leading environmental health hazard to children in the United States;

Whereas according to the Centers for Disease Control and Prevention, 434,000 preschool children in the United States have harmful levels of lead in their blood;

Whereas lead poisoning may cause serious, long-term harm to children, including reduced intelligence and attention span, behavior problems, learning disabilities, and impaired growth;

Whereas children from low-income families are 8 times more likely to be poisoned by lead than are children from high-income families;

Whereas children may be poisoned by lead in water, soil, or consumable products;

Whereas children most often are poisoned in their homes through exposure to lead particles when lead-based paint deteriorates or is disturbed during home renovation and repainting; and

Whereas lead poisoning crosses all barriers of race, income, and geography: Now, therefore, be it

Resolved, That the Senate—

(1) designates the week of October 24, 2004, through October 30, 2004, as ''National Childhood Lead Poisoning Prevention Week''; and

(2) requests that the President issue a proclamation calling upon the people of the United States to observe such week with appropriate programs and activities.

S. RES. 458

Whereas the Ansari X Prize was established with private capital to jumpstart the space tourism industry, inspire and educate

students, focus public attention and investment capital on this new business frontier, and challenge explorers and rocket scientists around the world;

Whereas the $10,000,000 Ansari X Prize was modeled after the $25,000 Orteig Prize won by trans-Atlantic aviator Charles Lindbergh in 1927;

Whereas on October 4, 2004, SpaceShipOne, designed by Burt Rutan and flown first by Mike Melvill and later by Brian Binnie, won the Ansari X Prize by being the first privately funded space vehicle to depart from and safely return to Earth twice within 2 weeks;

Whereas SpaceShipOne broke the previous record for maximum altitude achieved by a plane, which was set by the X-15 in 1963;

Whereas the SpaceShipOne flights represent a historic accomplishment for humanity; and

Whereas future achievements in commercial space flight will be stimulated by an ongoing annual competition for an X Prize Cup, beginning in 2006 at White Sands Missile Range outside Las Cruces, New Mexico: Now, therefore be it

Resolved, That the Senate—

(1) congratulates the SpaceShipOne team led by Bert Rutan, and test pilots Mike Melvill and Brian Binnie, for their historic achievement in human space flight;

(2) recognizes the contributions of all members and supporters of the X Prize Foundation and the SpaceShipOne team, the efforts of which were instrumental in this accomplishment; and

(3) encourages the continuation of efforts towards practical commercial space flight through future X Prize Cup and other competitions.

S. RES. 459

Whereas the music of the United States embodies the artistic reflection of the country's history and heritage and the promise of its ideals and values;

Whereas the music of the United States transcends culture, gender, race, class, and creed, and thrives freely as it is continually reinvented, rearranged, transformed, and infused by the personal experiences of men and women;

Whereas the music of the United States expresses the country's vital cultural and social identities and empowers the people of the United States to assert and preserve our pasts for a future, transforms the wondrous and harsh experiences of the people of the United States into potent messages that freely declare democratic choice and freedom of expression, inspires social justice, enlivens collective action, and reflects our Nation's dynamic social movements;

Whereas the National Federation of Music Clubs (NFMC) and its 17th president, Ada Holding Miller, building on their efforts to create American Music week in 1924 with the aid of Arthur Bodansky, conductor of the Metropolitan Opera, and Walter Damrosch, conductor of the New York Symphony Orchestra, established ''American Music Month'' and the ''Parade of American Music'' in February 1955 to recognize music and its importance to the social, cultural, historical, and educational development of the United States;

Whereas by action of the NFMC Board of Directors in 1998, the celebration of ''American Music Month'' was changed to the month of November in 1999 at the request of Sonneck Society for American Music;

Whereas the leading arts and education organizations of the United States, such as the Society for American Music, MENC: the National Association for Music Education, the College Music Society, the Music Library Association, the American Musicological Society, and Americans for the Arts, continue to strive to stimulate the appreciation, performance, creation, and study of music in the United States;

Whereas the month of November has witnessed the births of such artistic legends as Scott Joplin (1868), William Christopher ''W. C.'' Handy (1873), Aaron Copland (1900), Coleman Hawkins (1904), and Mary Travers (1937) of the folk song trio Peter, Paul and Mary; the premiers of the New York Symphony (1878), the Philadelphia Orchestra (1900), Jerome Kern's musical, Show Boat, in Washington, DC (1927), Frede Grofé's Grand Canyon Suite in Chicago (1931), and the first broadcast of the newly-organized National Broadcasting Company (1926);

Whereas November 2004 marks the sesquicentennial of John Philip Sousa's birth on November 6, 1854, and is an occasion to celebrate his monumental contributions to the musical heritage of the United States;

Whereas John Philip Sousa's music continues to embody the unflagging spirit of the United States and, as a product of a renaissance in the art and technology of the United States, affirmed the previous generation's contagious patriotism and profound love of country even as they witnessed the brutalities of a Nation at war; his music was a fanfare about and for all men and women of this United States and his rousing melodies celebrated the best and worst of the diverse cultures and emerging histories of the United States; even today, Sousa's music conveys our Nation's indomitable spirit to the world; and

Whereas John Philip Sousa, as Director of the United States Marine Band from 1880 to 1892, brought ''The President's Own'' to unprecedented levels of excellence and shaped the band into a world-famous musical organization, and through White House performances, public concerts, and national tours, the Band continues to maintain Sousa's standard of excellence for the performance of the music of the United States: Now, therefore, be it

Resolved, That the Senate—

(1) designates November 2004 as ''American Music Month'' to celebrate music performance, education, and scholarship in the United States;

(2) recognizes that the musical heritage of the United States should be honored, celebrated, and preserved for future generations as expressions of this country's democratic freedoms and indomitable spirit; and

(3) requests the President to issue a proclamation calling on the people of the United States to observe ''American Music Month'' with appropriate ceremonies and programs to honor the contributions of the music educators, performers, scholars, conductors, composers and arrangers, librarians, archivists, and curators of the United States for their tireless efforts to foster greater understanding and preservation of the diverse music and cultures of the United States through active performance, education, and cultural engagement.

S. RES. 460

Whereas the Sixteenth Street Baptist Church of Birmingham, Alabama, was constructed in 1911 and served as a center for African-American life in the city and a rallying point for the civil rights movement during the 1960s;

Whereas on Sunday, September 15, 1963, segregationists protesting the mandatory integration of Birmingham's public schools firebombed the Sixteenth Street Baptist Church;

Whereas the blast killed Addie Mae Collins, age 14, Denise McNair, age 11, Carole Robertson, age 14, and Cynthia Wesley, age 14, all members of the Church, while they were preparing for Sunday service;

Whereas September 15, 1963, has been called the darkest day in the history of Birmingham and one of the darkest days of the entire civil rights movement;

Whereas this act of terrorism raised national and international awareness of the African-American civil rights struggle and galvanized those dedicated to the cause of civil rights;

Whereas Congress passed the Civil Rights Act of 1964 (Public Law 88-352, 78 Stat. 241) and the Voting Rights Act of 1965 (Public Law 89-110, 79 Stat. 437) in the wake of the bombing;

Whereas the 4 men suspected of the bombing, Bobby Frank Cherry, Herman Cash, Thomas Blanton, and Robert Chambliss, were not immediately prosecuted because authorities believed it impossible to obtain a conviction in the heated racial climate of the mid-1960s;

Whereas Alabama Attorney General Bill Baxley successfully prosecuted Robert Chambliss 13 years after the bombing;

Whereas after the indictment and conviction of Robert Chambliss, the bombing investigation was closed;

Whereas the bombing investigation was reopened in 1995 due to the efforts of Federal Bureau of Investigation Special Agent Rob Langford and local African-American leaders;

Whereas in 2001 and 2002, a joint Federal and State task force, under the supervision of United States Attorney Douglas Jones and Alabama Attorney General William Pryor, successfully prosecuted Thomas Blanton and Bobby Frank Cherry with the assistance of State and local law enforcement personnel; and

Whereas the bombing, the prosecution of the offenders, and the cause of civil rights in general have become national and international concerns: Now, therefore, be it

Resolved, That the Senate, on the occasion of the 40th anniversary of the bombing of the Sixteenth Street Baptist Church of Birmingham, Alabama—

(1) honors the memory of Addie Mae Collins, Denise McNair, Carole Robertson, and Cynthia Wesley;

(2) recognizes the historical significance of the bombing and the enduring impact it has had on the cause of civil rights everywhere; and

(3) commends the efforts of the Alabama Attorney General's office for its successful prosecution of Robert Chambliss in 1977, the efforts of the joint Federal and State task force for the successful prosecution of Bobby Frank Cherry and Thomas Blanton in 2001 and 2002, and the efforts of all other law enforcement personnel who worked to bring the persons responsible for the bombing to justice.

S. RES. 461

Whereas the well-being of the Nation requires that the young people of the United States become an involved, caring citizenry with good character;

Whereas the character education of children has become more urgent as violence by and against youth increasingly threatens the physical and psychological well-being of the people of the United States;

Whereas more than ever, children need strong and constructive guidance from their families and their communities, including schools, youth organizations, religious institutions, and civic groups;

Whereas the character of a nation is only as strong as the character of its individual citizens;

Whereas the public good is advanced when young people are taught the importance of good character and the positive effects that good character can have in personal relationships, in school, and in the workplace;

Whereas scholars and educators agree that people do not automatically develop good character and that, therefore, conscientious efforts must be made by institutions and individuals that influence youth to help young people develop the essential traits and characteristics that comprise good character;

Whereas, although character development is, first and foremost, an obligation of families, the efforts of faith communities, schools, and youth, civic, and human service organizations also play an important role in fostering and promoting good character;

Whereas Congress encourages students, teachers, parents, youth, and community leaders to recognize the importance of character education in preparing young people to play a role in determining the future of the Nation;

Whereas effective character education is based on core ethical values which form the foundation of democratic society;

Whereas examples of character are trustworthiness, respect, responsibility, fairness, caring, citizenship, and honesty;

Whereas elements of character transcend cultural, religious, and socioeconomic differences;

Whereas the character and conduct of our youth reflect the character and conduct of society, and, therefore, every adult has the responsibility to teach and model ethical values and every social institution has the responsibility to promote the development of good character;

Whereas Congress encourages individuals and organizations, especially those who have an interest in the education and training of the young people of the United States, to adopt the elements of character as intrinsic to the well-being of individuals, communities, and society;

Whereas many schools in the United States recognize the need, and have taken steps, to integrate the values of their communities into their teaching activities; and

Whereas the establishment of National Character Counts Week, during which individuals, families, schools, youth organizations, religious institutions, civic groups, and other organizations would focus on character education, would be of great benefit to the Nation: Now, therefore, be it

Resolved, That the Senate—

(1) proclaims the week beginning October 17, 2004, as ''National Character Counts Week''; and

(2) requests that the President issue a proclamation calling upon the people of the United States and interested groups to—

(A) embrace the elements of character identified by local schools and communities, such as trustworthiness, respect, responsibility, fairness, caring, and citizenship; and

(B) observe the week with appropriate ceremonies, programs, and activities.

S. RES. 462

Whereas section 101(1) of the Afghanistan Freedom Support Act of 2002 (22 U.S.C. 7511(1)) declares that the ''United States and the international community should support efforts that advance the development of democratic civil authorities and institutions in Afghanistan and the establishment of a new broad-based, multi-ethnic, gender-sensitive, and fully representative government in Afghanistan'';

Whereas on January 4, 2004, the Constitutional Loya Jirga of Afghanistan adopted a constitution that promises free elections with full participation by women and establishes a legislative foundation for democracy in Afghanistan;

Whereas on June 15, 2004, President Bush stated that ''Afghanistan's journey to democracy and peace deserves the support and respect of every nation . . . . The world and the United States stand with [the people of Afghanistan] as partners in their quest for peace and prosperity and stability and democracy.'';

Whereas the independent Joint Electoral Management Body in Afghanistan and thousands of its staff throughout Afghanistan have worked to register voters and organize a fair and transparent election process despite violent and deadly attacks on them and on the purpose of their work;

Whereas more than 10,500,000 Afghans have been reported registered to vote, demonstrating great courage and a deep desire to have a voice in the future of Afghanistan, and more than 40 percent of those reported registered to vote are women;

Whereas the presidential election campaign in Afghanistan officially began on September 7, 2004 and 18 candidates, including one woman, are seeking the presidency;

Whereas on October 9, 2004, the people of Afghanistan will vote in the first direct presidential election, at the national level, in Afghanistan's history at 5,000 polling centers located throughout Afghanistan, as well as polling centers in Pakistan and Iran;

Whereas the United States, the European Union, the Organization for Security and Cooperation in Europe, and the Asian Network for Free Elections will send monitors and support teams to join the more than 4,000 domestic election observers in Afghanistan for the presidential election;

Whereas the United States and many international partners have provided technical assistance and financial support for elections in Afghanistan; and

Whereas the International Security Assistance Force (ISAF), led by the North Atlantic Treaty Organization (NATO), and coalition forces will join the Afghan National Army and police in Afghanistan to help provide security during the presidential election: Now, therefore, be it

Resolved that it is the sense of the Senate that—

(1) the United States applauds the steadfast commitment of the people of Afghanistan to achieve responsive and responsible government through democracy;

(2) the United States strongly supports self-government and the protection of human rights and freedom of conscience for all men and women in Afghanistan; and

(3) the United States remains committed to a long-term partnership with the people of Afghanistan and to a peaceful future for Afghanistan.

AUTHORIZING PRINTING OF REVISED EDITION OF SENATE RULES AND MANUAL

Mr. FRIST. I ask unanimous consent that the Senate proceed to the consideration of S. Res. 463.

The PRESIDENT pro tempore. The clerk will report the resolution by title.

The assistant legislative clerk read as follows:

A resolution (S. Res. 463) authorizing the printing of a revised edition of the Senate Rules and Manual.

There being no objection, the Senate proceeded to consider the resolution.

Mr. FRIST. I ask unanimous consent that the resolution be agreed to and the motion to reconsider be laid upon the table.

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

The resolution (S. Res. 463) was agreed to, as follows:

S. RES. 463

Resolved,

SECTION 1. REVISED EDITION OF THE SENATE RULES AND MANUAL.

(a) REVISED EDITION.—The Committee on Rules and Administration of the Senate shall prepare a revised edition of the Senate Rules and Manual for the use of the 109th Congress.

(b) SENATE DOCUMENT.—The revised edition of the Senate Rules and Manual shall be printed as a Senate document.

(c) BINDING AND DISTRIBUTION.—In addition to the usual number of documents, 1,500 additional copies of the revised edition of the Senate Rules and Manual shall be bound and distributed, of which—

(1) 500 paperbound copies shall be for the use of the Senate; and

(2) 1,000 copies shall be delivered as may be directed by the Committee on Rules and Administration and bound as follows:

(A) 550 paperbound.

(B) 250 nontabbed black skiver.

(C) 200 tabbed black skiver.

EXPRESSING SENSE OF SENATE WITH RESPECT TO PROSTATE CANCER INFORMATION

NATIONAL VISITING NURSE ASSOCIATION MONTH

NATIONAL RUNAWAY PREVENTION MONTH

EXPRESSING SENSE OF CONGRESS THAT IT IS APPROPRIATE TO ANNUALLY OBSERVE PATRIOT DAY, SEPTEMBER 11

RECOGNIZING AND HONORING MILITARY UNIT FAMILY SUPPORT VOLUNTEERS

Mr. FRIST. Mr. President, I ask unanimous consent that the resolutions at the desk be discharged from their respective committees and the Senate proceed to their consideration, en bloc.

The PRESIDENT pro tempore. The clerk will report the resolutions by title.

The assistant legislative clerk read as follows:

A resolution (S. Res. 389) expressing the sense of the Senate with respect to prostate cancer information.

A concurrent resolution (S. Con. Res. 8) designating the second week in May each year as National Visiting Nurse Association Week.

A resolution (S. Res. 430) designating November 2004 as National Runaway Prevention Month.

A concurrent resolution (H. Con. Res. 486) recognizing and honoring military unit family support volunteers for their dedicated service to the United States, the Armed Forces, and members of the Armed Forces and their families.

A concurrent resolution (H. Con. Res. 473) expressing the sense of Congress that it is appropriate to annually observe Patriot Day, September 11, with voluntary acts of service and compassion.

There being no objection, the Senate proceeded to consider the resolutions.

Mr. FRIST. I ask unanimous consent that the amendments at the desk be agreed to; the resolutions, as amended, if amended, be agreed to; the preambles, as amended, if amended, be agreed to; the title amendment, where applicable, be agreed to; and the motions to reconsider be laid upon the table, all en bloc.

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

There being no objection, the Senate proceeded to consider the resolution (S. Res. 389), which was agreed to, as follows:

S. RES. 389

Whereas in 2004, it is estimated that approximately 230,000 new cases of prostate cancer will be diagnosed in the United States, and nearly 30,000 men in the United States will die from prostate cancer;

Whereas prostate cancer is the second leading cause of cancer death in men in the United States;

Whereas more than $4,700,000,000 is spent annually in the United States in direct treatment costs for prostate cancer;

Whereas African-American men are diagnosed with and die from prostate cancer more frequently than men of other ethnic backgrounds;

Whereas increased education among health care providers and patients regarding the need for prostate cancer screening tests has resulted in the diagnosis of approximately 86 percent of prostate cancer patients before the cancerous cells have spread appreciably beyond the prostate gland, thereby enhancing the odds of successful treatment;

Whereas the potential complication rates for significant side effects vary among the most common forms of treatment for prostate cancer;

Whereas prostate cancer often strikes elderly people in the United States, men should have an opportunity to learn about the benefits and limitations of testing for prostate cancer detection and of treatment of prostate cancer, so that they can make an informed decision with the assistance of a clinician; and

Whereas Congress as a whole, and Members of Congress as individuals, are in unique positions to support the fight against prostate cancer, to help raise public awareness about the need to make screening tests available to all people at risk for prostate cancer, and to provide prostate cancer patients with adequate information to assess the relative benefits and risks of treatment options: Now, therefore, be it

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

(1) national and community organizations and health care providers have played a commendable role in supplying information concerning the importance of screening for prostate cancer and the treatment options for patients with prostate cancer; and

(2) the Federal Government and the States should ensure that health care providers supply prostate cancer patients with appropriate information and any other tools necessary for prostate cancer patients to receive readily understandable descriptions of the advantages, disadvantages, benefits, and risks of all medically efficacious screening and treatments for prostate cancer, including brachytherapy, hormonal treatments, external beam radiation, chemotherapy, surgery, and watchful waiting.

There being no objection, the Senate proceeded to consider the concurrent resolution (S. Con. Res. 8).

The amendments (Nos. 4050 and 4051) were agreed to, as follows:

AMENDMENT NO. 4050

Strike all after the resolving clause and insert the following:

That it is the sense of Congress that there should be established a National Visiting Nurse Association Week.

AMENDMENT NO. 4051

Strike the preamble and insert the following:

Whereas visiting nurse associations (''VNAs'') are non-profit home health agencies that, for more than 120 years, have been united in their mission to provide cost-effective and compassionate home and community-based health care to individuals, regardless of the individuals' condition or ability to pay for services;

Whereas there are approximately 500 visiting nurse associations, which employ more than 90,000 clinicians, provide health care to more than 4,000,000 people each year, and provide a critical safety net in communities by developing a network of community support services that enable individuals to live independently at home;

Whereas visiting nurse associations have historically served as primary public health care providers in their communities, and are today one of the largest providers of mass immunizations in the medicare program (delivering more than 2,500,000 influenza immunizations annually);

Whereas visiting nurse associations are often the home health providers of last resort, serving the most chronic of conditions (such as congestive heart failure, chronic obstructive pulmonary disease, AIDS, and quadriplegic) and individuals with the last ability to pay for services (more than 50 percent of all medicaid home health admissions are by visiting nurse associations);

Whereas any visiting nurse association budget surplus is reinvested in supporting the association's mission through services, including charity care, adult day care centers, wellness clinics, Meals-on-wheels, and immunization programs;

Whereas visiting nurse associations and other nonprofit home health agencies care for the highest percentage of terminally ill and bedridden patients;

Whereas thousands of visiting nurse association volunteers across the Nation devote time serving as individual agency board members, raising funds, visiting patients in their homes, assisting in wellness clinics, and delivering meals to patients.

Whereas the establishment of National Visiting Nurse Association Week would increase public awareness of the charity-based missions of visiting nurse associations and of their ability to meet the needs of chronically ill and disabled individuals who prefer to live at home rather than in a nursing home, and would spotlight preventive health clinics, adult day care programs, and other customized wellness programs that meet local community needs; and

Whereas the second week of May 2005 is an appropriate week to establish a national visiting Nurse Association Week: Now, therefore, be it

The concurrent resolution (S. Con. Res. 8), as amended, was agreed to.

The preamble, as amended, was agreed to.

The concurrent resolution, with its preamble, reads as follows:

S. CON. RES. 8

Whereas visiting nurse associations (''VNAs'') are nonprofit home health agencies that, for more than 120 years, have been united in their mission to provide cost-effective and compassionate home and community-based health care to individuals, regardless of the individuals' condition or ability to pay for services;

Whereas there are approximately 500 visiting nurse associations, which employ more than 90,000 clinicians, provide health care to more than 4,000,000 people each year, and provide a critical safety net in communities by developing a network of community support services that enable individuals to live independently at home;

Whereas visiting nurse associations have historically served as primary public health care providers in their communities, and are today one of the largest providers of mass immunizations in the medicare program (delivering more than 2,500,000 influenza immunizations annually);

Whereas visiting nurse associations are often the home health providers of last resort, serving the most chronic of conditions (such as congestive heart failure, chronic obstructive pulmonary disease, AIDS, and quadriplegia) and individuals with the least ability to pay for services (more than 50 percent of all medicaid home health admissions are by visiting nurse associations);

Whereas any visiting nurse association budget surplus is reinvested in supporting the association's mission through services, including charity care, adult day care centers, wellness clinics, Meals-on-Wheels, and immunization programs;

Whereas visiting nurse associations and other nonprofit home health agencies care for the highest percentage of terminally ill and bedridden patients;

Whereas thousands of visiting nurse association volunteers across the Nation devote time serving as individual agency board members, raising funds, visiting patients in their homes, assisting in wellness clinics, and delivering meals to patients;

Whereas the establishment of a National Visiting Nurse Association Week would increase public awareness of the charity-based missions of visiting nurse associations and of their ability to meet the needs of chronically ill and disabled individuals who prefer to live at home rather than in a nursing home, and would spotlight preventive health clinics, adult day care programs, and other customized wellness programs that meet local community needs; and

Whereas the second week of May 2005 is an appropriate week to establish as National Visiting Nurse Association Week: Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), That it is the sense of Congress that there should be established a National Visiting Nurse Association Week.

The title amendment (No. 4052) was agreed to, as follows:

AMENDMENT NO. 4052

Amend the title so as to read: ''Expressing the sense of Congress that there should be established a National Visiting Nurse Association Week.''

There being no objection, the Senate proceeded to consider the resolution (S. Res. 430), which was agreed to, as follows:

S. RES. 430

Whereas the prevalence of runaway and homeless youth in the United States is staggering, with studies suggesting that between 1,600,000 and 2,800,000 young people live on the streets of the United States each year;

Whereas running away from home is widespread, with 1 out of every 7 children in the United States running away before the age of 18;

Whereas youth that end up on the streets are often those who have been thrown out of

their homes by their families, who have been physically, sexually, and emotionally abused at home, who have been discharged by State custodial systems without adequate transition plans, who have lost their parents through death or divorce, and who are too poor to secure their own basic needs;

Whereas effective programs supporting runaway youth and assisting young people in remaining at home with their families succeed because of partnerships created among families, community-based human service agencies, law enforcement agencies, schools, faith-based organizations, and businesses;

Whereas preventing young people from running away and supporting youth in high-risk situations is a family, community, and national responsibility;

Whereas the future well-being of the Nation is dependent on the value placed on young people and the opportunities provided for youth to acquire the knowledge, skills, and abilities necessary to develop into safe, healthy, and productive adults;

Whereas the National Network for Youth and its members advocate on behalf of runaway and homeless youth and provide an array of community-based support services that address the critical needs of such youth;

Whereas the National Runaway Switchboard provides crisis intervention and referrals to reconnect runaway youth to their families and to link young people to local resources that provide positive alternatives to running away; and

Whereas the National Network for Youth and the National Runaway Switchboard are co-sponsoring National Runaway Prevention Month to increase public awareness of the life circumstances of youth in high-risk situations and the need for safe, healthy, and productive alternatives, resources, and supports for youth, families, and communities: Now, therefore, be it

Resolved, That the Senate designates November 2004 as ''National Runaway Prevention Month''.

There being no objection, the Senate proceeded to consider the concurrent resolution (H. Con. Res. 486), which was agreed to.

There being no objection, the Senate proceeded to consider the concurrent resolution (H. Con. Res. 473), which was agreed to.

AUTHORIZING PRINTING OF COMMEMORATIVE DOCUMENT IN MEMORY OF LATE PRESIDENT RONALD WILSON REAGAN

Mr. FRIST. I ask that the Chair now lay before the Senate the House message to accompany S. Con. Res. 135, providing for the printing of a commemorative document honoring former President Reagan.

The President pro tempore laid before the Senate a message from the House, as follows:

Resolved, That the resolution from the Senate (S. Con. Res. 135) entitled ''Concurrent resolution authorizing the printing of a commemorative document in memory of the late President of the United States, Ronald Wilson Reagan'', do pass with the following amendment:

Page 1, beginning on line 13, strike [Senate document, with illustrations and suitable binding] and insert ''*House document, with illustrations and suitable binding, under the direction of the Joint Committee on Printing*''.

Mr. FRIST. I ask unanimous consent that the Senate concur in the House amendment and the motion to reconsider be laid upon the table, and any statements relating to the concurrent resolution be printed in the RECORD.

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

SPECIAL OLYMPICS SPORT AND EMPOWERMENT ACT OF 2004

Mr. FRIST. I ask unanimous consent that the Senate now proceed to the immediate consideration of H.R. 5131, which is at the desk.

The PRESIDENT pro tempore. The clerk will report the bill by title.

The assistant legislative clerk read as follows:

A bill (H.R. 5131) to provide assistance to Special Olympics to support expansion of the Special Olympics and development of educational programs and a Healthy Athletes Program, and for other purposes.

There being no objection, the Senate proceeded to consider the bill.

Mr. FRIST. I ask unanimous consent that the bill be read a third time and passed; the motion to reconsider be laid upon the table; and any statements relating to the bill be printed in the RECORD.

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

The bill (H.R. 5131) was read the third time and passed.

COLUMBIA MEMORIAL SPACE SCIENCE LEARNING CENTER

Mr. FRIST. I ask unanimous consent that the Senate proceed to the immediate consideration of H.J. Res. 57.

The PRESIDENT pro tempore. The clerk will report the joint resolution by title

The assistant legislative clerk read as follows:

A joint resolution (H.J. Res 57) expressing the sense of the Congress in recognition of the contributions of the seven Columbia astronauts by supporting establishment of a Columbia Memorial Space Science Learning Center.

There being no objection, the Senate proceeded to consider the joint resolution.

Mr. FRIST. I ask unanimous consent that the joint resolution be considered read a third time and passed; the motion to reconsider be laid upon the table; and any statements relating to the joint resolution be printed in the RECORD.

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

The joint resolution (H.J. Res. 57) was read the third time and passed.

Mr. FRIST. Mr. President, I yield the floor.

Mr. REID. Mr. President, while the majority leader is on the floor, as the leader knows, we had a difficult time working things out last night and so I would ask that the 10 minutes we have used here this morning which would push the vote to right about 10 after 1, that we have these times locked in. I think that would be appropriate, so I ask unanimous consent that everything slide 10 minutes.

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

RESERVATION OF LEADER TIME

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

AMERICAN JOBS CREATION ACT OF 2004—CONFERENCE REPORT

The PRESIDENT pro tempore. Under the previous order, the Senate will now resume consideration of the conference report to accompany H.R. 4520, which the clerk will report.

The assistant legislative clerk read as follows:

The Committee of Conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 4520), to amend the Internal Revenue Code of 1986 to remove impediments in such Code and make our manufacturing, service, and high-technology businesses and workers more competitive and productive both at home and abroad, having met have agreed that the House recede from its disagreement to the amendment of the Senate and agree to the same with an amendment and the Senate agree to the same, signed by a majority of the conferees on the part of both Houses.

The PRESIDENT pro tempore. Under the previous order, the time until 1 p.m. shall be equally divided between the managers. Within that time, there are specific times set aside for specific Senators: 11:40 to 12:10 p.m., the Senator from Louisiana; 12:10 to 12:30, the Senator from West Virginia, Mr. BYRD; 12:30 to 1 p.m., the Senator from Iowa, Mr. GRASSLEY, and the Senator from Montana, Mr. BAUCUS.

There are further exceptions to this in the Calendar before the Senators.

Who yields time?

The Senator from Kentucky.

Mr. BUNNING. Mr. President, I yield myself 10 minutes of allotted time. I so ask unanimous consent.

The PRESIDENT pro tempore. The Senator is recognized.

Mr. BUNNING.

Mr. President, I rise today in support of the conference report on the American Job Creation Act of 2004. This conference report will provide needed incentives for U.S. manufacturers and will take the first step toward ending EU tariffs on our exporters.

Most importantly for Kentucky, this bill will finally bring the help that our tobacco growers have needed for years.

Because we are repealing the FSC/E.T.I. rules, the European Union must remove the sanctions—now 11 percent—which they have levied on many U.S. exports.

I have from employers back home about how they are struggling under the weight of these tariffs, which are hurting their exports and their plans to expand their businesses.

By passing this bill, we make our exports more competitive again, and we help our economy create new jobs.

It is a big win for my state and our Nation.

The tax centerpiece of this bill, of course, is a provision to provide help to America's manufacturing sector.

This sector of our economy has been under serious pressure since early 2000.

The jobs that manufacturing creates are good-paying jobs and we must do what we can to ensure that these jobs will be here in the future.

This bill creates a new deduction for domestic manufacturers employing American workers. That deduction cuts the tax rate for domestic manufacturers who employ American workers.

This will help keep jobs here at home and make our manufacturers more competitive in the world marketplace.

I am pleased that we were able to improve one aspect of this provision in conference. We were able to eliminate the ''haircut'' that would have cut the benefits available to many businesses that employ workers in the U.S. merely because those businesses also operate abroad.

I am glad that this bill recognizes the contributions to our economy made by companies such as Toyota, Nestlé, and Mazak that are in my state providing jobs to hard-working Kentuckians every day.

While I am pleased that the conference report before us includes many other provisions that will have a positive impact on my state's economy, including the horse, restaurant and railroad industries, I am disappointed that the conference did not include the Senate energy tax credits.

We have waited for a comprehensive energy bill for too long. America has energy needs we must address today, and so we put a few energy provisions in this bill.

Despite these clear needs and my best efforts, they were stripped in conference. This bill could have done more, but let me be clear about one thing —— we will be back.

Despite this shortcoming, I am pleased that the Soybean Biodiesel and Corn Ethanol Tax provisions are in the conference report.

These tax provisions will encourage the use of alternative fuels which will help Kentucky farmers and biodiesel manufacturers while also increasing domestic energy production, boosting conservation, and lessening our dependence on foreign oil.

And most importantly, this is an historic day for Kentucky's tobacco growers. My growers will finally receive the relief they need and deserve. We finally have a buyout.

Since Daniel Boone first came through the Cumberland Gap, farming has been both the economic and cultural backbone of the commonwealth.

The family farm is the basis of Kentucky culture and these farms rely on tobacco.

For years, we in Kentucky have tried to diversify from the tobacco crop. We have had some success and some failures.

But in the end, we come back to tobacco because nothing brings a higher return.

The money farmers get from tobacco pays their mortgage and puts their kids through school and allows them to stay on the farm.

Outside of the western part of Kentucky, we do not have tens of thousands of acres of flat land.

We need a crop that grows on rolling hills and that thrives in our climate. Tobacco does that.

But many forces have conspired against tobacco in the last few years.

The previous administration declared war on tobacco and, by extension, tobacco farmers.

The Asian economic crisis hurt exports. The master settlement agreement and state tax increases dramatically raised the price of cigarettes.

And although American tobacco is still superior, the companies have invested so much overseas that the gap has narrowed between American tobacco and cheap foreign tobacco.

As most of my colleagues know, there are no direct payments to tobacco farmers, but we do have price supports and production controls.

Growers own quota which they can buy, sell or lease. The government administers this program to get growers a fair price for their tobacco and make sure they only sell what they are allowed to.

If you grow too much, you can't sell it. However, the tobacco program, which has served Kentucky so well, now hangs like a millstone around growers' necks.

Burley tobacco quotas have lost 46 percent of their value since 1998. We are looking at another 10 percent cut this year. We have lost a lot of growers, from 10,000 in 1988 to 32,000 in the year 2003. We have many who are barely holding on.

Many of the tobacco quota holders are elderly and can no longer work the land, so they lease their quota and that income becomes a major part of their retirement security. That quota is tied to the land. It has a direct effect on the property taxes Kentuckians pay.

The conference report we have before us today will buy out those tobacco programs. We will give our growers relief and end the Federal price support program. We will also have many growers whose average age is 62 retire and get out of the business. Dr. Will Snell of the University of Kentucky estimates that 70 to 75 percent of tobacco growers will get out of the business with the buyout. We will allow growers to pay off their debts and have more certainty about their future.

I am also happy we were able to bring the bill out of conference without the FDA provisions. The House made it very clear in conference they would not pass a bill with FDA regulations in it. I voted for FDA regulations on the Senate floor, but only as a means to get my growers a buyout. But in the end, FDA regulation provisions have become a hindrance to the buyout. A buyout without FDA is the best of both worlds for Kentuckians. My growers will get their relief but without the worry of having the FDA invade their farms.

In the conference, when we were forced to choose between my growers getting relief or killing the bill by adding FDA, I chose the buyout, and I would do so again in a heartbeat. That is how important this buyout is to Kentucky.

I strongly urge my colleagues to support this conference report.

Mr. President, I yield the floor.

The PRESIDENT pro tempore. Senator GRASSLEY has 41 minutes 11 seconds.

The PRESIDENT pro tempore. The Senator from Iowa.

Mr. GRASSLEY. I yield myself as much time as I may consume.

The PRESIDENT pro tempore. The Senator is recognized.

Mr. GRASSLEY. Mr. President, there are several antifraud provisions in this conference report. Most of the focus in the media has been on the tax benefits of this legislation, but an extremely important aspect of the bill is how it closes giant corporate tax loopholes. This legislation, by closing them, obviously is going to bring revenue into the Federal Treasury that is otherwise just going into the treasuries of corporations.

This legislation includes Enron reforms that Members have been pushing for since Enron was exposed 3 years ago. Don't forget, for about 5 or 6 years before that, before the year 2001, Enron was doing their dirty work. But we finally got it exposed in 2001, and we have been taking some corrective action through corporate governance policies already passed by the Congress, and now we are taking action to close the abuse of the Tax Code by Enron-type executives.

It is a little ironic that many of those same Senators who have demagogged the Enron scandal are now opposing this bill. They seem to be more interested in something that is not in this bill than the very good public policy of cracking down on fraud that is actually in this bill. I am proud of the fact that many of these antifraud measures in this report stemmed from cases that were investigated and exposed by the very capable staff of the Senate Finance Committee. With that staff working for me and staff working for Senator BAUCUS, along with various whistleblowers and informants, and now with the House of Representatives passing this bill, we are about ready to shut down these Enron-type corporate tax abuses.

This has not been an easy process, but it is a real example of how our perseverance pays off. Back in July of 2001, the Finance Committee staff first discovered what has become known as a huge fraud upon the taxpayers, and that is the fuel tax evasion. This fraud is costing the taxpayers at least $10 billion. So, No. 1, Enron-type fraud, abusive tax shelters; now we are talking

about fraud that comes from people not paying the fuel tax on gasoline and diesel fuel that would be then spent on the highways.

The Finance Committee had a very important hearing exposing this type of fuel fraud tax scam. The problem has come to light in more recent prosecutions. One involved an alleged terrorist cell that was skimming off fuel and selling it, using the money for God only knows what. It could have found its way into terrorist activity against the United States.

In another case, in July, prosecutors charged 19 workers at the Miami International Airport with falsely classifying jet fuel as contaminated to avoid paying the fuel tax. They would then sell it on the sly, stealing 2.7 million gallons of fuel.

Another tax scam that my staff uncovered involves what is known as service-in/lease-out, or SILO. These schemes were discovered by a Finance Committee major hearing, showing these fraudulent arrangements are put together by high-priced lawyers and accountants. In these scams, companies actually lease public works systems such as subways and sewers from cities, and then turn right around and lease them back to the same cities. The cities get upfront money, presumably under the argument that their municipal treasuries can use it, particularly in times when the economy is down. But here is what happens: The cities get a little bit of upfront money, but the companies get millions of dollars of tax writeoffs. So the taxpayer is left holding an empty bag under this scheme.

That sounds unbelievable, doesn't it? But it is true. The bill we are about to vote on puts a stop to this and saves the taxpayers over $27 billion.

Let me also note that we have provisions in this bill that address other abuses, significant abuses in the donation of intellectual property, as well as the donations of cars.

Corporations have been reducing their tax bills by hundreds of millions of dollars each year by taking intellectual property of little to no value and donating it to charity. This legislation ends this abuse by corporations while still encouraging the donation of legitimate intellectual property that has real value for actual development.

We also ended the shady tax practice of people providing some junker cars to a charity and claiming thousands for it off their individual income tax.

The reforms in this legislation will place no additional burden on the donor, will not reduce the amount going to charities from the donated car by a single dime, and will benefit all taxpayers by ending this abusive scheme.

There has been noise coming from a few that this reform shouldn't have been done on this bill. A lot of that noise is not coming from charities but from middlemen who are the ones who really make the profit off of this abuse.

To say we should have delayed this is nonsense. As my comments highlight, it is very difficult and also uncommon for us to have a legislative opportunity to address tax shelters and tax abuse.

This bill provides the most sweeping attack on abusive corporate tax shelters in an entire generation of this Congress. So we cannot pass up an opportunity to address an abusive corporate tax situation. It can very well be years before another opportunity presents itself to the Congress to deal with the problem of people not paying their fair share of taxes. Forget about the word ''fair share''—just say paying taxes that are due.

These efforts to address abuses in charitable donations are part of an ongoing bipartisan Senate Finance Committee review of nonprofits, something the Democratic ranking member, Senator BAUCUS, and I are working on together.

I anticipate we will be addressing other areas in the future such as land donations and facade donations based on our investigations of the Nature Conservancy and other land donation organizations.

But I do want to say, since I named some of these organizations, that I think some of these organizations have gotten the message and are making attempts to correct some of the deficiencies in their own operations that abuse the Tax Code.

I am very pleased that in this bill we deal with a situation where executives take corporate aircraft for personal travel. Legislation in this bill will put significant limitations on corporations being able to write off such high living.

Again, based on the work of the Finance Committee, we were able to ground a good number of these high-flying corporate executives. The Finance Committee initially placed limitations to deal with abuses that were seen in the Virgin Islands and other U.S. territories. There were many people going down there to the Virgin Islands to not only get a tan but also to avoid the taxman.

I am pleased that, working with Treasury and working with the Ways and Means Committee of the other body, we were able to further tighten these limitations to address the tax problems we are seeing down there in the sunny islands of the Caribbean.

Finally, I am glad that in the conference committee we were able to adopt the Finance Committee's proposal championed by Senator NICKLES to end the SUV deduction for businesses. Senator NICKLES also was right when he said it would be an embarrassment if we couldn't deal with this abuse, and we did. That is around $50 billion of fraud which the Finance Committee uncovered, pursued, and that is in this bill. That doesn't count the billions of dollars which I considered abuse but which the House of Representatives must not have considered abuse because they wouldn't agree to putting it in this bill. But I am going to continue to deal with corporate abuse.

I made this statement to the leaders of the Ways and Means Committee in our conference committee. I offered amendments to go further than this conference report goes. The House conferees refused, but I made clear that where these corporate abuses aren't adequately handled and dealt with in this conference report, that come January I intend, if I am chairman of the committee, to pursue more closing of corporate tax abuses. If I am not chairman, Senator BAUCUS will be chairman, and I think, although I shouldn't speak for him, he is as committed to this as I am because we have had 2 good years of working together on this issue.

The taxpayers are getting their money's worth out of this Senate Finance Committee. They are entitled to get more of their money's worth out of Senate Finance Committee when we continue to clamp down on these corporate tax abuses.

The Constitution may say that revenue measures have to start in the House, but the fact is, they are being created in the Senate by closing loopholes and cracking down on fraud and abuse.

I thank the House of Representatives, and particularly the cooperative working arrangement we had on this conference report with Chairman THOMAS of the House Ways and Means Committee in getting as far as we have in closing down these corporate tax abuses.

The Senate Finance Committee has been so successful in rooting out tax fraud. We have more and more information coming to us over the transom about newer, more crooked and creative scams being cooked up out there in the underworld of tax shelters. All I can say to this underworld is, watch out, because we are coming after you.

I yield the floor.

The Senator from Ohio is yielded 10 minutes off the time which I have remaining.

The PRESIDENT pro tempore. The Senator from Ohio is recognized for 10 minutes.

Mr. DEWINE. Mr. President, I ask unanimous consent that during my discussion this morning I be able to display several packs of cigarettes and a container of macaroni and cheese which I have in front of me.

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

Mr. DEWINE. Mr. President, I urge my colleagues today at 1 o'clock to vote no on the cloture vote. The conference committee stripped out from this bill the FDA regulation of tobacco. I think it was a serious mistake. It really represents a missed opportunity—a greatly missed opportunity—for us to cut health costs in this country and to save lives.

All of us come to this floor so many times and talk about saving lives. We come all the time talking about what has happened with health care costs in this country.

There is nothing we could do which would be more important than to pass the FDA regulation of tobacco. There is nothing we could do that would be more important to save lives and to cut health care costs in this country. Yet, unbelievably, the conference committee stripped this provision out of the bill.

How long are we going to allow the tobacco companies to remain above the law and outside the law?

What am I talking about? I talked about this a little bit on the floor yesterday, but I want to explain it again.

When I say ''above the law,'' I really mean above the law. Macaroni and cheese—everyone knows macaroni and cheese. Kids eat a lot of macaroni and cheese, at least mine do. The side packet has every piece of information anyone would want to know about it and a lot more: calories, fiber, sugar, dietary fiber, saturated fat. It is all on here. It includes citric acid, sodium phosphate; everything is listed. But the same company that makes the macaroni and cheese also makes Marlboros. Guess what. Pick up a pack of Marlboros and there is no information about the contents. Why? Because there is a loophole in the law; Marlboros are outside the law.

How about claims made by tobacco companies? Marlboro Lights—it means nothing. When you have yogurt and it says ''light yogurt,'' it means something. You read on here ''one-third less calories.'' It is regulated by the Government. Not tobacco.

What about the other claims by the cigarette companies? When they make a claim, it doesn't mean anything, unlike every other product in the stream of commerce today. Take Advance Premium Lights. The back says ''All the taste, less of the toxins.'' One would assume that means they are safer. Who knows there are less toxins? No one checks this. The Government does not regulate it. It is a dangerous product, and the Government does not regulate it. How crazy is this? How long are we going to put up with this?

Eclipse, another product. I read from the back what they claim:

Scientific studies show compared to other cigarettes Eclipse may present less risk of cancer, bronchitis, possibly emphysema, reduces secondhand smoke by 80 percent, leaves no lingering odor in hair or clothes.

More health claims, yet nothing to back it up.

The worst thing the tobacco companies do, the worst thing we allow them to do, the worst thing this Congress continues to allow them to do is to target kids.

Skoal, a pinch better. Apple blend. Does anyone think longtime Skoal users are using apple blend? Give me a break. Who is using this? Who are they targeting? Entry-level users. They are after kids with apple blend.

Cigarettes: Liquid Zoo, vanilla flavor. Give me a break. Kool, Mocha Taboo. Who is that after? Kids. Camels, Beach Breezer. Or this one: Kauai Kolada. Do you think a 60-year-old longtime tobacco consumer of Camels is using this? Obviously not. Who is using this and who the tobacco companies are targeting is kids. That is who they want to use this entry-level drug. They want to get them hooked. They get them hooked on something like this: Mandarin Mint Camels. That is what they do.

We allow this to continue. The FDA regulation bill would have stopped it, the bill the conference committee inexplicably stripped out of this bill, a bill the Senate passed overwhelmingly and sent to the conference committee. The conferees turned their backs on children's health, turned their backs on public health, and stripped it out. That is the reason we all should vote no on this conference report.

We come to the Senate many times and we talk about health costs. We say we need to do something about health costs. Let me state the figures from my home State of Ohio. If we do not think the passage of this bill would have done a lot, the annual health care costs in Ohio for smoking, our annual health care costs, what it costs in Ohio, is $3.4 billion, and that is just my home State of Ohio alone. Our Medicaid costs, much paid for by taxpayers—Federal, State—$1.1 billion. That is not even talking about the cost in human life. The cost in human life, adults in Ohio who die each year prematurely because of tobacco, 18,900; kids 18 years of age and younger in Ohio who ultimately die prematurely from smoking, 314,000.

I have today with me letters from the American Heart Association, the American Lung Association, the Ohio Children's Hospital Association, the American Thoracic Society, and the Campaign for Tobacco-Free Kids which I ask unanimous consent to have printed in the RECORD.

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

NATIONAL CENTER FOR TOBACCO-FREE KIDS,
Washington, DC, October 8, 2004.

Re opposition to FSC/ETI bill without FDA jurisdiction over tobacco.

Hon. MIKE DEWINE,
Russell Senate Office Building,
Washington, DC.

DEAR SENATOR DEWINE: We were profoundly disappointed by yesterday's decision by the House/Senate conference on the FSC legislation not to include provisions establishing FDA regulation of tobacco products. An historic opportunity to protect the nation's children and the nation's health was lost.

Enacting FDA regulation of tobacco products is the single most important thing Congress could do to reduce cancer, heart disease, emphysema, chronic bronchitis and a host of other diseases. It is the single most important thing Congress could do to improve the health of our children and protect our children from unscrupulous marketing by an industry that produces a product that kills one out of two long-term users. Close to 90% of all tobacco users start as children. First and foremost, it is our children who were ignored and who are the big losers by the decision not to include FDA in the FSC/ETI legislation.

The tragedy is not only that an opportunity to prevent disease has slipped through our fingers, but also that literally hundreds of thousands, if not millions of kids, once addicted, eventually will die of these tobacco-related diseases. And these deaths will be needless. They will occur because of the actions of the House/Senate Conferees who failed to include FDA in the original Conference draft and who voted not to add it the final bill. Tobacco use is also a leading cause of premature birth. If Congress had given FDA authority over tobacco products, Congress could have dramatically reduced the number of children born prematurely with serious medical problems due to tobacco use.

Rarely does Congress have the opportunity to take an action that will improve the lives and well being of millions of Americans. This was such an opportunity. Tobacco companies market candy flavored cigarettes, promote their products in a myriad of ways that make them more appealing to children, hide the truth about the dangers of their products and fail to take even the most minimal steps to reduce the number of Americans who die from tobacco use. By the decision not to include the FDA provisions adopted overwhelmingly by the Senate in this bill, Congress is doing nothing to stop them.

Not even our profound disappointment in yesterday's outcome, however, can diminish the gratitude we feel for your courageous efforts to pursue enactment of this legislation, against all odds, in the face of countless setbacks, always putting kids first. We commit to you that our struggle with you to achieve lasting protection of our kids and our society through regulation of tobacco products is not over.

Yesterday's vote by the FSC conference committee against FDA authority over tobacco is a big victory for the tobacco industry that will carry a heavy price in lives lost and kids addicted to tobacco. The nation will also pay a price in growing cynicism about government when Congress appears willing to trade tax breaks for kids' lives. We urge all Senators and Members of Congress to oppose the FSC Conference Report until the FDA provisions are included.

Sincerely,

MATTHEW L. MYERS,
President.

OHIO CHILDREN'S HOSPITAL ASSOCIATION,
Columbus, OH, October 7, 2004.

Hon. MIKE DEWINE,
U.S. Senate,
Washington, DC.

DEAR SENATOR DEWINE: I write today to express the terrible disappointment felt among Ohio's children's hospitals that Congress has lost an opportunity to protect the health of America's children. It is my understanding that your efforts to enact legislation granting the Food and Drug Administration authority to regulate the manufacturing and marketing of tobacco products has been thwarted by intense tobacco industry pressures. This is a shameful waste of a rare opportunity to take the bold action needed to reduce a staggeringly dangerous health risk that hurts kids and increases the cost of health care.

Ohio has been working hard to reduce youth smoking, and children's hospitals have long been at the frontlines of this battle to protect our children from the devastating toll that tobacco exacts. But, for every step forward we take (youth smoking in Ohio is down recently), we face a barrage of new and cunning attempts by the tobacco industry to regain its foothold with Ohio's children. The tobacco industry is spending more than ever

to market its products in ways that appeal to children. As a depressing example, we now face the prospect of candy-flavored cigarettes.

Across the country, every day 2,000 more children become regular smokers, one-third of whom will die prematurely as a result.

FDA regulation of tobacco products represents the best tool for combating the tobacco industry's reckless assault on our children's health. We need the FDA to have the authority to subject tobacco products to the same rigorous standards we impose on other consumer products, including ingredient disclosure, truthful packaging and advertising, and manufacturing controls.

Senator DeWine, we greatly appreciate your work on behalf of Ohio's children, and we only wish that the Congress could have stepped up to its responsibilities to protect our children from the tobacco scourge.

Sincerely,

ANDREW CARTER,
President.

AMERICAN THORACIC SOCIETY,
San Diego, CA, October 7, 2004.

Hon. MIKE DEWINE,
U.S. Senate,
Washington, DC.

DEAR SENATOR DEWINE: Congress is about to give the Big Tobacco the one thing they want, continued access to the most attractive market for their deadly products—our children. Don't let Big Tobacco continue to peddle their products to our children.

The best way to protect our nation's children from the continuing disease and addiction caused Big Tobacco and their deadly products is by granting the Food and Drug Administration (FDA) the authority to regulate tobacco.

The bipartisan compromised reached in the Senate FSC bill would have granted the FDA the authority needed to regulate tobacco and reduce underage smoking throughout America. Unfortunately, during conference the supporters of Big Tobacco struck the one provision that would have given our children a fighting chance against the pervasive marketing power of tobacco companies.

If Congress fails to give FDA the authority to regulate tobacco, our children will pay the price. Children will pay the price through a lifetime of addiction to tobacco products. Children will pay through the diseases associated with tobacco addiction—lung disease, heart disease and cancer. Children will pay the price, literally, with their lives.

Senator DeWine, the 14,000 members of American Thoracic Society thank you for your tireless efforts to protect children from tobacco. Please don't stop now. Don't let the opportunity to protect our nation's children from tobacco addiction go up in smoke. We are counting on you and your colleagues to exhaust every legislative tool available to you to ensure that the FSC tax bill includes the provision granting FDA the authority to regulate tobacco.

Sincerely,

SHARON I.S. ROUNDS, MD,
President, American Thoracic Society.

AMERICAN HEART ASSOCIATION,
Dallas, TX, October 7, 2004.

TO THE MEMBERS OF THE U.S. SENATE: On behalf of the American Heart Association's 22.5 million volunteers and advocates, I write you to express our deep dismay over the Foreign Sales Corporation (FSC) conference vote that failed to grant the Food and Drug Administration (FDA) authority to regulate tobacco products. This represents a squandered opportunity to protect the public against dangerous tobacco products, a failure to protect our children from the marketing of tobacco products, and also the adoption of the wrong tobacco buyout plan. How can Congress explain such neglect for our nation's health?

The original FDA legislation approved by the Senate and introduced by Senators Mike DeWine and Edward Kennedy had overwhelming support from both the public health community and tobacco grower groups. In the Senate, true champions of public health had fought for the success of this measure, while others worked to derail efforts to reduce the death and disease that result from tobacco use. A few members' blind and unwarranted opposition to regulation that would save lives will have a tragic result. Our chance to reduce tobacco related deaths and disease has gone up in smoke.

Tobacco use is responsible for more than 440,000 deaths each year, with more than one in three from heart disease or stroke. Each day, 4,000 youth try their first cigarette and 2,000 become regular daily smokers. This FDA legislation offered our best chance to reverse that trend and reduce the senseless death and disease that results from tobacco use.

And sadly, the buyout that was adopted in conference fails in many aspects. First, it provides far less assistance to hard-hit tobacco farmers than the earlier Senate-approved measure: $796 million less in North Carolina; $490 million less in Kentucky; and, $141 million less in Virginia, to name a few effected states. This buyout will only prolong the cycle of economic misery too many of these farmers face. It lacks incentives to encourage farmers to leave tobacco farming. It neither restricts the amount of tobacco that can be grown, nor does it limit where it can be grown. And without price controls, the result will be more hard times for tobacco growers trying to compete with cheap international tobacco.

The American people deserve an explanation for the failings of the current FSC legislation, and on behalf of our association and our volunteers, I hope the responsible votes are cast in opposition. As it stands, this bill is a raw deal for our nation's health, our youth and tobacco farmers.

M. CASS WHEELER,
Chief Executive Officer.

AMERICAN LUNG ASSOCIATION,
October 7, 2004.

Hon. MIKE DEWINE,
U.S. Senate,
Washington, DC.

DEAR SENATOR DEWINE: How can the Congress give $10 billion to tobacco growers without requiring anyone to exit the tobacco farming business and fail to do anything for public health? This is unconscionable.

Over 440,000 people die prematurely from tobacco-related illness each year and two thousand children become addicted regular smokers every day. Nearly 90 percent of lung cancer and 80 to 90 percent of emphysema and chronic bronchitis are caused by tobacco use. Despite this deadly assault on lung health, tobacco products are the most unregulated consumer products on the market today.

Senator, the American Lung Association thanks you for your steadfast commitment to America's children. Your leadership on FDA regulation is laudable. Please implore your colleagues to change course and include the FDA oversight of tobacco in the FSC bill.

Tobacco companies continue to aggressively market their products to our children, cynically targeting ''replacement smokers'' for those who die or quit smoking. New flavored cigarettes including R.J. Reynolds' Camel Exotic Blends Kauai Koloda with ''Hawaiian hints of pineapple and coconut'' and Kool Caribbean Chill and Mocha Taboo are aimed at young people. The tobacco companies make health claims of ''reduced carcinogens'' or ''less toxins'' without any oversight of the veracity of the statements or their impact on health.

FDA regulation of tobacco would:

Ban flavored cigarettes.

Stop illegal sales of tobacco products to children and adolescents.

Require changes in tobacco products, such as the reduction or elimination of harmful chemicals, to make them less harmful or less addictive.

Restrict advertising and promotions that appeal to children and adolescents.

Prohibit unsubstantiated health claims about so-called ''reduced risk'' tobacco products that would have the effect of discouraging current tobacco users from quitting or encouraging new users to start.

Require the disclosure of the contents of tobacco products and tobacco industry research about the health effects of their products.

Require larger and more informative health warnings on tobacco products.

How many more children must become addicted to tobacco before Congress regulates cigarettes? Senator DeWine, do not allow the U.S. Congress to squander this opportunity to protect the public health and provide the Food and Drug Administration regulatory oversight over tobacco products.

Thank you again for your leadership.

Sincerely,

JOHN L. KIRKWOOD,
President and CEO,
American Lung Association.

Mr. DEWINE. They all make the point that the FDA provision that was in this bill would have saved lives, would have made a difference, would have protected our society.

Members may say: There are good things in this bill—I have to vote for this bill—good things for my State. I simply point out to them at some point we have to say enough is enough. At some point we have to say the status quo is not acceptable. At some point we have to look at the bigger picture than what is going on in this bill. Yes, there are good things for Ohio, there are good things for your State, but the statistics I cited, the tremendous health care costs in dollars and cents and human cost, have to be considered. At some point we have to take a stand.

We may not win this battle today, but we will be back. We will be back to finally regulate this one product that is escaping the law, the one product we are not regulating today, a product which, even when it is used as intended, is a dangerous product that kills many Americans. It must be regulated. It must be brought under the law. We must stop the tobacco companies from targeting our kids. We must stop them from going after children every single day, trying to make more children addicted, trying to kill more children. It is wrong. It is morally wrong.

This Congress, some day I hope in the not-too-distant future, will say we have had enough; we are not going to stand for it anymore; we are going to do what we have to do to save our children. The fringe benefit, besides saving

lives, is going to be that we will dramatically slash health care costs in this country. I urge a ''no'' vote.

The PRESIDENT pro tempore. The Chair in his capacity as the Senator from Alaska suggests the absence of a quorum.

The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

The Senator from Iowa is recognized.

Mr. GRASSLEY. Mr. President, I yield myself such time as I might consume.

Ms. LANDRIEU. Reserving the right to object.

The PRESIDENT pro tempore. The Senator has control of 13 minutes 25 seconds. There is no right to object.

Ms. LANDRIEU. Thank you.

Mr. GRASSLEY. Mr. President, for this entire year I have come to the floor many times to tell my colleagues all the reasons this conference report is a must-pass piece of legislation. I have talked about trade and I have talked about tariffs. I have talked about the necessity of stopping outsourcing, lowering the cost of capital to our corporations so they can be more competitive in international competition, keeping jobs in America, reducing that cost of capital, as this bill does, by reducing the corporate tax rate for manufacturing in America—a direct incentive to produce here rather than producing overseas.

Now, that is what the main part of this bill is all about, but it has some other aspects to it. I want to talk about $24 billion—$24 billion—that may be gone forever if we do not pass this bill; $24 billion to go into the highway trust fund. I do not serve on the committee that expends the money from the highway trust fund. I do serve on the committee, the Finance Committee, that provides how much gas tax we should have and other moneys that go into the highway trust fund. But for those who do deal daily with the highway trust fund, this $24 billion is the biggest single increase in highway trust fund income in over 6 years.

Now, where does the $24 billion come from? It does not come from new taxes. Instead, we overhaul an outdated excise tax system to address our Nation's increased use of renewable fuels, such as ethanol.

In addition to overhauling the excise tax system that is outdated, we crack down on big-time fuel fraud to make sure that bad guys are not robbing our States of their much-needed highway money. But the only way we can get all of that money is if we pass this bill, and do it right now, because that will bring $24 billion into the trust fund—the only way.

You have to put the money into the trust fund today to build roads tomorrow. And you cannot start collecting any new money until we change these outdated rules that keep this $24 billion from going into the road fund. All of the Senators who are filibustering this bill are costing every State new highway dollars.

To put this in perspective, my home State of Iowa, as an example, under this bill could get an additional $900 million over 6 years, but only if we pass this bill this year. So anybody from the State of Iowa voting in the Congress of the United States ought to know if they vote no on this bill that they are costing the State of Iowa $900 million. Even if we postponed the rule changes until we pass a highway bill now, which is not going to be passed until next year, Iowa will still lose $140 million forever—never get that back.

How many roads can Iowa build with $900 million? How many bridges can we repair with $900 million? I do not know why any Senator would jeopardize the safety of every citizen in his State by failing to pass the highway trust fund.

There are other Senators who do not want to put money in the bank today so we can build the roads for tomorrow. Every Senator, of course, has their right to vote as they please, but every State also has the right to know what that vote will cost the highway bill and what it will cost their State.

Let's look at California. They are going to be big winners in this VEETC and fuel fraud reform that is in this legislation. The estimated increase in California's highway revenue is over $2 billion—$2 billion of new highway money. But the only way to get the full benefit of the estimate is to pass this bill now. So I would ask the California Senators to look at this legislation, put the money in the bank today, and then build roads tomorrow.

Illinois would be a big loser if Members of that delegation would vote no on cloture and no on this bill. The Illinois Department of Transportation knows exactly what they would lose if this bill does not pass. It is close to $3 billion. That $3 billion can be put in the trust fund today to build roads tomorrow.

I would hope no one comes whining to me as chairman of the Senate Finance Committee next year that we do not have enough money to fund the highway bill, especially when you have an opportunity—right here today—handed to you on a silver platter to put $24 billion into the highway trust fund, more money for your States. And you ought to consider that not a silver platter, you ought to see that as some sort of a golden platter, a golden opportunity. But we have Senators who are bound and determined to deny every State department of transportation $24 billion. We never get an opportunity like this to put a package of highway funding together. We may not get this opportunity again.

Vote no today, and every road, bridge, highway construction project is cheated. Vote no today and every highway job not only next year but until the year 2010 will be in jeopardy, running short of money. I do not know if we can ever get this kind of funding package put together again.

Let me suggest to you how tenuous it was on aspects of this. Disagreements between me and the House of Representatives a year ago last summer—not differences involving Democrats and Republicans, differences involving Republicans, between me and the House of Representatives—to get this put together so this money would come into the highway trust fund, so we would take care of this issue of fuel fraud.

The Vice President of the United States intervened to bring a compromise together a year ago last June because, quite frankly, I thought a year ago now we were going to have the highway bill passed, and this was going to be part of the highway bill, to bring this $24 billion into this road fund. You do not get opportunities like that very often. You do not get strokes of luck like that very often to get to where we are today.

Now, the other thing about being where we are today is this bill before us is not a highway bill. The highway bill should have passed, but I guess now it is going to go over until next year. That is not in my area of responsibility, so I am anticipating what other Senators would tell you. But we have the good fortune of people looking very broadly at what is good for America or not good for America, and feeling that this provision of $24 billion into the highway trust fund so we do not lose this revenue—and we have already lost some—we have this opportunity now. We can do it in this JOBS bill as opposed to the highway bill so we don't lose that revenue.

One other thing that is in dispute is why we don't have the regulation of tobacco in this bill. I don't know how the Senate Finance Committee that deals with taxes and trade and Medicare and Medicaid and Social Security and welfare and pensions and Customs and the IRS, all of those things, how we get saddled dealing with an issue that belongs in the Committee on Health or the Committee on Agriculture. But we got it dumped on us.

I don't know why the Health, Education, Labor Committee that has this in their jurisdiction, particularly when Democrats are complaining about it not being in this bill, couldn't have passed that in the year 2001 and 2002 when they controlled that committee. But, no, they dumped this on us. Anyway, we have to deal with it, and it is not in there. It makes some people mad, both Republican and Democrat.

I want everybody to know, even though it should not have been in this bill, I voted for it on the floor of the Senate to hasten this bill along, to put it in here, and I offered it to the House of Representatives that it be included. I didn't offer it; one of my colleagues offered it. But I supported my colleague because I thought regulation of

nicotine was legitimate. Now it is not here, and we had a lot of speeches last night and today about it. So I want to speak about that.

I voted for this despite the growing problems that are coming to light about the FDA falling down on its current responsibilities. And my investigative staff has been in the middle of that, of buyouts, as an example, trying to get the FDA to recognize that their scientists are trying to tell us there is some danger out there. And they won't listen to them; in fact, they tried to suppress it. Or antidepressants, as in the case of the FDA scientists raising questions about that and being stomped on for a year until finally the study committee studied it and voted 15 to 8 that there ought to be a warning put on antidepressants for children because they are committing suicide. Yet people want to put more on the back of FDA when they have problems there.

Anyway, that is a whole other issue. The FDA has come under investigation, including my own that I have just talked about, involving Vioxx, as we have been reading about within the last week. It was revealed by my Finance Committee staff that it looked as though the FDA pressured employees to suppress negative findings regarding Vioxx.

In today's paper, we read about what looks like the FDA falling down on the job in regard to the flu vaccine crisis.

So, I hope some around here aren't trying to mislead the American people into thinking that FDA regulation is some kind of panacea for smoking.

I heard one Senator from the other side say that we sided with the tobacco companies when the FDA provision failed. Well that is interesting. That is surely what opponents would like you to think. But, there is a dirty little secret involved here. Or, at least it is a secret vis-a-vis the public.

The fact is, the tobacco companies are divided on whether there should be FDA regulation. In fact, the largest tobacco company actually supports FDA regulation, and has been lobbying heavily and pouring money into the effort to get it.

Why? Well, for one thing, a great deal of its business is overseas, and it will therefore be immune from FDA regulation. This will give it a competitive edge against its competitors. So, the tobacco companies, or at least the biggest one, is much more in favor of FDA regulation than against it.

Therefore, anybody trying to frame this as tobacco versus kids, or tobacco versus health groups, is just flatly misleading the public.

But, even for those of us who pushed for FDA oversight, our legs were cut right out from under us during the negotiations. And guess who cut the legs right of from under us? The leadership of the Democratic Party cut the legs right out from under us. That's who.

The leader of the Democratic party, Senator KERRY, went down to North Carolina to talk to tobacco farmers. Guess what he said. He said he'd support a tobacco buyout with or without FDA regulation.

So, it looks to me like the senior Senator from Massachusetts didn't communicate very well with the junior Senator from Massachusetts—or vice-versa.

Moreover, we had the Democratic Senate Campaign Chairman saying the same thing last week. He said he didn't need FDA regulation with a tobacco buyout.

And, he even had his candidate for the North Carolina Senate seat up here lobbying right over in the conference committee room to get this buyout through, with or without FDA. Can you believe that?

And, to add insult to injury to the Democratic Senators from Massachusetts, and Iowa, the Senate Democratic Leader even signed the conference report.

So, obviously, when the House leadership knew the votes were there in the Senate for a buyout without FDA, they weren't about to agree to it in conference, and there's no way we could have successfully pushed it.

Now, what more does it take from their own leaders to undermine what the Democratic Senators from Iowa and Massachusetts wanted to do? Seems to me they need to get their own house in order before criticizing others.

The PRESIDENT pro tempore. The time of the Senator has expired.

Mr. GRASSLEY. Does that mean all the time we had remaining on this side?

The PRESIDENT pro tempore. The Senator has 15 minutes, but it occurs later in the allocated time.

Mr. GRASSLEY. I thank the Chair.

The PRESIDENT pro tempore. The Senator from Nevada.

Mr. REID. Mr. President, the Senator from Louisiana has 30 minutes under her control that is supposed to start about 11:40.

The PRESIDENT pro tempore. That time starts at 11:52.

Mr. REID. With the consent of the Senate, I yield 10 minutes to the Senator from Louisiana from the time of Senator DORGAN, who will not use his time, and I would ask unanimous consent that her time begin now.

The PRESIDENT pro tempore. Senator DORGAN only has 5 minutes.

Mr. REID. Senator HARKIN has 5 minutes, so I will yield Senator HARKIN's 5 and Senator DORGAN's 5 to her, and her time will start running now, for a total of 40 minutes.

The PRESIDENT pro tempore. Without objection, it is so ordered. The Senator from Louisiana is recognized for a period of 40 minutes.

Ms. LANDRIEU. Mr. President, I want to begin by thanking Senator GRASSLEY, chairman of the Finance Committee, for his hard work on this bill. It has been a very difficult and complicated process. He and his staff, as well as Senator BAUCUS, have done an extraordinary job moving a $137 billion tax benefit bill through the Senate and through the Congress over the last 2 years. We have been intimately involved in the building and crafting of this bill. There have been literally hundreds of meetings, hearings, debates, and negotiations, some public and some in private, over the last 2 years to put together a bill that is $137 billion.

My colleagues will note these bills that are on their desks that have been here since Thursday morning. This was printed Thursday morning or Friday morning and distributed to us, the first time that we have had this in its entirety to read its contents and to understand what is in it. We had our version, but we sent it over to the House and then the conference version came back.

Mr. GRASSLEY, the Senator from Iowa, and the Senator from Montana have done a great job trying to provide a lot of good provisions in this bill. I am going to speak about that specifically in a moment. But before he left the floor I wanted to commend him for his work.

I rise today to speak for 40 minutes and will continue to speak throughout the course of the debate, which may go on for a day or two or three or four until we finally wrap up the business of this session. I will continue to rise and speak about one item that was conspicuously and unconscionably and unjustly left out of this bill. There was one item that we had passed out of the Senate, a unanimously by voice vote, Republicans and Democrats, unanimously sent over to the House, to include in this $137 billion tax bill an amendment for the Guard and Reserve called the Guard and Reserve Paycheck Protection Act—the Guard and Reserve, the 640,000 men and women who have been called up since the conflicts started in Afghanistan and Iraq, the men and women on the front line supporting our Active troops, protecting us at ground zero of the war on terror in Iraq and Afghanistan.

We had a provision in there to keep their paychecks whole. It was taken out by the Republican leadership of the House.

Before I get into the details, let me just divert and say, to get off on a little bit of a lighter and more positive note, I congratulate our LSU team, our Southern team, and our Grambling team for winning on the football field last night. LSU came back from a very dramatic game, which I got to watch part of after being here late into the night, and won 24 to 21 over Florida. Southern beat Alabama 33 to 24, and Grambling beat Mississippi State 34 to 26. And Louisiana at Monroe beat Idaho—I am sorry to say to the Senator from Idaho—16 to 14. The teams from Louisiana won last night.

I feel strongly that the people of Louisiana would like us to make our best effort to make sure that we can win throughout this week, whether the action is taken now or the action is

taken sometime in the near future, for us to win for our Guard and Reserve on the front lines.

I don't know why the provision was left out, but I would like to share a visual that is pretty dramatic. I have shared it before. I want to be clear: I have spoken on this on and off for several hours for the last 5 days. I don't object to anything in this bill. Although there are other Senators on both sides, Senator MCCAIN, Senator HARKIN, Senator DEWINE, Senator KENNEDY, other Senators have expressed real concern. I appreciate those concerns. But that is not my issue. That is not why I have stood on this floor objecting.

I am objecting to the passage of this bill because it left out the men and women who are on the front line of the war on terror, whether they are at home as first responders or in Iraq or Afghanistan. Members of our Armed Forces were left out of a $137 billion tax credit bill. We could not find one page, one paragraph, one sentence to include them in. You can sit here all day and read this bill. I am going to see how many pages are in the bill. It looks like there are about 650 pages of provisions. We refer to this around here as the FSC/ETI legislation. We have been working on it for 2 years. It is supposedly a jobs bill. It supposedly provides tax relief to good companies, large companies, small companies, companies that import and export, companies that perhaps deserve the relief.

The bill started out correcting a decision made by the World Trade Organization to correct basically a $50 billion problem. But as you know—because the President pro tempore is experienced and is chairman of the Appropriations Committee and one of the senior Members of this body—tax bills have a tendency to grow. They keep growing and growing and growing and getting bigger and bigger and more and more expensive because it is very tempting for individuals and corporations and people who petition their Government who want relief or some special credit or want some special provision or think they are not being treated fairly—they petition all of us.

Well, there was one group that sent some of us a letter. I would like to read from this letter, the statement they sent, the Reserve Officers Association of the United States of America, the men and women on the front line. It was signed by Robert MacIntosh, who represents the major general: We continue to support tax credits for employers of reservists and National Guardsmen.

This position is a result of a problem faced by employers of Reserve members who support our forces when they are mobilized. The extended mobilization and stop-loss authorities, which means basically a backdoor draft, enacted by the President and the service Secretaries to support Operation Iraqi Freedom and Enduring Freedom in Afghanistan have served only to exacerbate these problems. Many employers want to extend pay and benefit coverage to the reservists but are finding this to be an unanticipated, long-term expense as operations in Iraq and Afghanistan entail multiple years of mobilization. Reservists are finding reemployment and employment difficult for the very same reason. As reservists' employers shoulder the burden of extra costs to support the employee's participation in the military, they become direct contributors to our Nation's defense. Employer pressure is listed as one of the top reasons for reservists to quit military service.

The ROA is disappointed to learn of recent actions by the House that defeated, by a voice vote, an attempt to revive amendment 3123 to Senate Report S. 1637, which would have provided a credit for the replacement employees of ready Reserve and National Guard employees called to military active duty.

The Reserve Officers Association of America—I am going to paraphrase here—represents the men and women who are carrying, in many ways, 100 percent of the risk, taking 100 percent of the bullets, leaving their families for hours and weeks and months and days for their training and their deployment.

I am paraphrasing this to say that the ROA urges Congress to support the employer tax credit as a means to eliminate civilian employment conflict and support recruitment and retention efforts.

It has come to the attention of some of us who have been involved in the Armed Services Committee—I have served on that Committee for several years and continue to support provisions through my position on Appropriations, as the Chair does, and many other Members of this body, support for our troops. I have supported provisions that support the Guard and Reserve as well as our Active because of many reasons but one in particular, which is that in the last several years, as you can see from this chart, our Government—all of us, the past President, the current President, the past Congress, this Congress, and Members from both sides—has basically rewritten the policy of defense. We have said we are going to have a total force structure, and it is going to be composed of 1.6 million Active-Duty officers—soldiers, sailors, marines, and Air Force—and we are going to have 1.2—that is the troop strength of our Guard and Reserve.

One of the reasons we count on the Guard and Reserve is for the benefit of the taxpayers, because it is not as expensive. They have civilian jobs and they only go when called up. They don't have to support them 24–7, year after year. We ask them to be ready. The least we can do is send them to Iraq with a full paycheck. We didn't do that because there are higher priorities in the bill. Every Member has come to say something about a priority in this bill. It could be any number of manufacturers. But for the record, for this Senator—and I know others join me—there could not possibly be any higher priority in this country today, right now, than the men and women who are fighting on the front lines in Iraq, Afghanistan, and their families who support them.

As you know, Mr. President—and I do because I have visited many bases and spent a lot of time with our troops—the truth is that most of the soldiers are used to sacrificing. It is why they signed up in the first place. They think it is a virtue. That is something we can learn more about in this Chamber, including me. I don't sacrifice nearly as much as I should. They are quite an inspiration to us. They don't mind making the sacrifice. I have not had one soldier bellyache about anything, even those who lost their arms and legs. Most of them say: Stitch me up and let me go back to the front line. That is admirable. You would think we could honor their service with more than pictures and words or by putting them in a bill.

They didn't ask for the whole bill or half of the bill or even for 25 percent of the bill. They asked for $2 billion out of $137 billion. We could not find it anywhere. We could not find the time, the will, the attention, or the focus to give them a little percentage of this bill.

Let me tell you how many of them we call up. We seem to be able to find their phone numbers when we call them to service but not to put them in the bill. From 1953 to 1989, we called up 200,000 Guard and Reserve. This was the traditional way we operated in our Government to protect the country. We would call them up when we absolutely had to: during the Berlin crisis of 1961, we called up 148,000 of them, and 148,000 families stayed home and prayed for their safe return. During the Cuban missile crisis, we called up 14,200, and 14,200 families stayed home and prayed along with their neighborhoods, churches, and places of employment for them to come back. You can go through this list. There were 199,000 from 1990 to 2004, just in the last 14 years, 8 of which I have been a Senator in this Senate and a member of the Armed Services Committee, so I know something about this. We have called them up time and time again and told them to leave their wives, their children, their employment, and go to the front lines. And they go—proudly. They don't ask for much. They served in the Persian Gulf war, 238,000 of them. They went to Haiti, 3,680. They went to Bosnia, 29,670. They served in Operation Southern Watch, 2,038. They went to Kosovo, 5,933. And they went to Afghanistan.

Today, before I came to the Senate to speak, I turned on television set and the headlines this morning across the Sunday shows is ''Elections Going on in Afghanistan.'' Who do we think made those elections happen? Did we

just wish for those elections to happen? I don't think so. Our troops made those elections happen. They wouldn't be happening without our Guard and Reserve troops, and our Active Forces.

I don't care how many speeches we give. I don't care how many bills we write. I don't care how many budgets we pass. The fact is, those elections would not be taking place today if it were not for these troops. They are good enough to get those elections started, but they are not good enough to be in this bill? That is why I am standing on this floor until the last possible minute that I can to delay these proceedings—not to be obnoxious, not to be ridiculous, not to be uncooperative, not because I don't support transportation, not because I don't support shipbuilding, but because I think we owe it to our troops to stand up for them. And I plan to do it.

Now I am going to talk about a couple of arguments I heard.

Mr. President, how much time do I have remaining?

The PRESIDENT pro tempore. The Senator has 23 minutes 25 seconds.

Ms. LANDRIEU. I thank the Chair. I want to talk about a couple of arguments I have heard the last couple of days, directly and indirectly, about why some Senators would object.

I want to be very clear. I know, as sure as I am standing here, at some later date I am going to have some sort of critic of mine, and I have my share of critics, standing up saying: There goes Senator LANDRIEU again. She's against tax cuts. She's trying to slow up our transportation bill. She's trying to slow up the highway bill. She never supports tax credits.

I am going to keep saying for the record the only reason I stand here, the only reason, is to try to get this Senate to do what it did a couple of weeks ago, which was to send over to the House of Representatives a bill that would include the Guard and Reserve.

There is nothing I can do as a Senator to make the House Republican leadership respond other than to bring this to light, to urge my colleagues to stand with me, Republicans and Democrats together, over here in the Senate, and send the bill back to the House and ask for them to consider it again. Maybe they made a mistake. Maybe they didn't realize this was one of the items. I don't know. I am not on the Finance Committee.

I sent a letter. Twenty-one of us signed it. I put it in the RECORD before so I won't read the letter, but it is addressed to Chairman GRASSLEY; to Ranking Member BAUCUS; to BILL THOMAS, chairman of the Ways and Means Committee; and to CHARLIE RANGEL, the ranking member.

I see Senator BAUCUS has come to the floor. I know he supports this provision, I know Senator GRASSLEY supports this provision, and I know CHARLIE RANGEL supports this provision. What I am not sure about is the chairman, BILL THOMAS. I don't know, maybe he didn't realize it was part of the request. There were over 2,000 requests, as you can see. I don't know how many items are in this bill, but it has to be thousands of items. I know it is difficult, so I am assuming he didn't know about it. That is why I am spending some time talking, so maybe the word will get there.

Twenty-one Senators signed this: KIT BOND of Missouri, a leading advocate for the Guard and Reserve signed this letter, along with MARK PRYOR, CHRIS DODD, DANNY AKAKA, BYRON DORGAN and Senator MIKULSKI and Senator LAUTENBERG, Senator MURRAY, Senator CORZINE, Senator CANTWELL, Senator SCHUMER, Senator NELSON, Senator TIM JOHNSON, Senator FEINGOLD, Senator DAYTON, Senator SARBANES, Senator DURBIN, Senator WYDEN, Senator LEVIN, and Senator LEAHY. I am sure there will be other Senators on both sides who will let their views be known to the House Republican leadership.

How in the name of heaven could the House Republican leadership put a bill together and leave out the Guard and Reserve? Tax cuts for fan importers? I want the fan importers to know that I am not picking on them. But I think this picture speaks a thousand words. For some reason—we could find a reason, and it may be a good one. I am sorry I don't know the details of it. I can't talk about it. I understand there is a good reason. Maybe someone could explain it, about the fans. But they are in the bill. The fans are in the bill, but the guys in Iraq or Afghanistan, where it is 105 degrees most of the time, in tents that are hot, carrying 50, 60 pounds of equipment and armor, who could use these fans, can't even get a paycheck to buy the fans.

When they go to Iraq they leave their civilian paycheck at home. They leave the comfort of their families at home. The GAO report is that most of them take a 41-percent pay cut. We couldn't find time to acknowledge that and say: My goodness, we are passing a tax bill, maybe we can fit them in.

We can't fit them in the tax bill. We can't fit them in the Transportation bill. We can't fit them in the Homeland Security bill. We can't fit them in the intelligence reorganization bill because, obviously, we don't think they have anything to do with our security.

Whether you think the front line, as I said, is in Iraq in the war on terror—which is an issue of debate, and I actually could debate that. Maybe it is not exactly the front line. But regardless of whether you think it is the front line, the second line, the third line or the back line or whether you think it is in Afghanistan, the fact is, we sent them there. We sent them there with half a paycheck, or 75 percent of their paycheck, so their families at home can lose their houses and lose their cars?

If anybody doesn't think that is true, please go to my Web site or talk to me. I will most certainly give the information to you. You know it yourself. You have seen the reports about the sacrifices families are making.

There are some other arguments that were made about this. One of them was Senator LANDRIEU and others are just complaining. They want to slow the process down. I hope I have answered that argument. I hope my colleagues and the leadership know I am not trying to be uncooperative. I understand people's schedules. I have two children, 12 and 7; I understand schedules. But my family supports it. They understand what I am doing, and I told them if it takes 4 days or 5 days or 3 days or 2 days, it is going to take it. I am sorry. But I think I owe it to the 5,000 men and women from my State who are serving in Iraq and Afghanistan because I just went home 3 weeks ago and waved goodbye to a lot of them.

I have been to Fort Hood and Fort Polk, telling them I am with them, taking pictures with them, and I'll be darned if I will take the pictures with them and not stay in the Senate and fight for them.

One of the Senators came to the floor this morning to argue we had eliminated the haircut provision—whatever that is. We support, in this bill, contributions of our industry. What about the contributions of the employers, small businesses and large businesses, that are carrying the extra burden of our defense by making those paychecks whole, sometimes at great difficulty to those businesses? What about these companies? I am going to provide a list in just a minute of some of those companies, which I have for the RECORD, but hundreds of companies, thousands of companies are trying their best, in some difficult times, to make those paychecks whole.

Why should we be giving tax credits to every other company? Some of them may overlap, but there is no mention of that in this bill. There is no direct support to the many companies that are being patriotic, that are doing the right thing.

Let me say something about these companies that are the beneficiaries in this bill. Again, many could be in shipbuilding, could be other manufacturers—I don't think there is one company that benefits from this bill, small or large, with 5 employees or 50,000 employees, that would say to the Members of the Senate: Please put me ahead of the Guard and Reserve. I don't believe it. That is why I have confidence I can stand here and I can talk about this. I do not think one industry in my State believes that in any way I am trying to take a penny away from them.

But for our Guard and Reserve, and their employers, in a time of war, at a time of great sacrifice, to ask to be included in the bill, I think they will find it very difficult to explain why they are not.

I know the third argument people have made, and I think I heard the chairman talk about it, is this is a jobs bill. I know jobs are important. I would like to make more happen in my State to create private sector jobs, high-paying jobs, good jobs. I do believe there

are some provisions of this $137 billion bill that will create jobs. But what job could be more important to our security than the job of our men and women in uniform and their service to our country?

Again, let me put up a chart that shows how many have gone, how many are serving, and to ask what we might do for them.

There is a total of 690,000 Guard and Reserve who are, right now, on the front line. Each of them, I presume, has some outside employment. Maybe some of them are working two jobs in their civilian life. These are doctors, lawyers, architects, truck drivers, policemen, firemen, nurses. There are 90,000 of them on the front line doing the work, but they are not in the bill.

Mr. President, how much time do I have remaining?

The PRESIDENT pro tempore. The Senator has 13 minutes 12 seconds.

Ms. LANDRIEU. Mr. President, in all of our States this is the number of the National Guard on active duty or alerted. You can see here that it is a very high percentage in many places in the country.

In Louisiana I have almost 40 percent of our Guard and Reserve who have been called up and activated.

In Washington State, 46 percent, almost half of their Guard and Reserve, have been activated.

In the State of Texas, 28 percent have been activated.

We can see this in every part of this Nation from the east to the west. In Hawaii, 57 percent—57 percent, almost 60 percent of the Guard and Reserve from Hawaii have been called up to serve.

These numbers may fluctuate as the needs of our military and the decisions made by the executive branch, the President and the Pentagon, change about where to shift these forces. But every one of these percentages represents thousands and thousands of families who are taking the direct burden of this.

I know we have tried to help them with pay increases. I know we have tried in other bills to help them improve their pensions. I have been part of most of those fights. I am proud to say in most of those fights we have been successful—but not always. My question is, Why do we only have to help the Guard and Reserve or the Active Forces in the military bills, in the Defense bills? Why can't we help them in our health care bills, in our tax cut bills, in any way we can? If we can afford it, we should step up to the plate. We should step up to the plate and do it.

I think I heard the chairman of the Finance Committee say earlier this morning that he was very proud that the Vice President himself could step in, and did step in—the Vice President of the United States. I think he said he stepped in to help the negotiations on a Transportation bill so we could get highways built in this country. I hope the Vice President and the President himself would step in and say, ''We made a mistake,'' or ''We just missed the issue,'' or ''We just missed the item,'' or ''We just didn't focus on it as we should,'' or ''The House leadership didn't focus, and let us make it up. Let us put it in this bill. Let us put it in another bill to help our Guard and Reserve.''

There are many ways that this could be corrected.

Mr. GRAHAM of South Carolina. Will the Senator yield for a question?

Ms. LANDRIEU. I will be pleased to.

Mr. GRAHAM of South Carolina. I have been listening to the debate. I am sure putting together legislation is a very complex matter right at the end of the session. I need to make a comment and ask a question.

I could not agree more with the state of affairs as has been described by the Senator from Louisiana. The Guard and Reserve are being used in historic fashion. Does the Senator realize that of all the part-time employees who exist in the Federal Government, the Guard and Reserve is the only group that does not have full-time access to health care?

Ms. LANDRIEU. I am aware.

Mr. GRAHAM of South Carolina. Does the Senator further realize that at least half of the people called to active duty from the Guard and Reserve leave behind civilian jobs and thus have a reduction in pay, sometimes substantial?

Ms. LANDRIEU. I do believe that.

Mr. GRAHAM of South Carolina. Does the Senator agree with me that no matter what happens in the last hours of this session, that next year, because 40 percent of the people serving on active duty in Afghanistan, Iraq, and other places are going to come from the Guard and Reserve, that we need to fix this, and whatever excuses exist today why we can't, that the Senate and the House need to understand that thousands of families are going off to get in a fight, getting injured, getting killed, and having their pay cut and no health care, and that the No. 1 priority of the Senate and House along with whomever is the President next year is to rectify some of these problems?

Ms. LANDRIEU. I thank the Senator from South Carolina. I thank him for his help and support. I work on many issues with him, and he is, as a member of the Guard and Reserve, most certainly aware of these situations. I know the Senator from South Carolina is not asking this for himself because the situation with his family is probably stable and steady. I know the Senator understands that many of the men and women he serves with don't have that same kind of security.

So we are asking them to provide security for us, and we can't find the time for a page or paragraph or a letter to find security for their families. I don't understand it and my constituents don't understand it. Most certainly the men and women in the Guard and Reserve in Louisiana, 12,000 families, do not understand it.

And so I frankly do not want to go home. I don't know what I would tell them when I do go home, how we could pass a $137 billion tax cut bill and forget them. How could we possibly forget them?

I got something from Senator DORGAN which is extremely upsetting to me I will speak about later today because I plan to speak and I am going to connect these dots for people. Maybe one reason we forget them is because there are corporate network executives demanding affiliates take the name of the dying soldiers off the reports at night. That is one way Americans could forget them. We don't want to take pictures of the funerals. We don't want to put their names on the screen, so we just forget they are dying. I understand that. Maybe there are good reasons. I don't want to get into that debate because it gets us into, well, some of the families want it, some of the families don't. I understand that. But still, even if they are not being scrolled on the television, if that is not the right thing to do, surely the Senators and elected leaders who represent them do not need to be reminded by the scrolls on television of those who died.

Many of us have been over to Walter Reed Hospital and visited them personally. Do we need to be reminded? I don't think I had to go stand at the conference committee and tell Chairman THOMAS. And I am going to speak later today about Chairman THOMAS's district and about what his district is like, and I am sure he knows that. I have done a little research myself about that, so maybe people in his district could get word to our colleague because while it is important what we say to colleagues, what is most important, as you know, is what our constituents say to us.

How much time do I have remaining?

The PRESIDENT pro tempore. The Senator has 5½ minutes.

Ms. LANDRIEU. The third argument that I have heard from some people about why I should sit down and stop talking is because some people are opposed to tax credits. Some people don't like tax credits. Some people think it is an inefficient way to operate the Government.

I am not on the Finance Committee. All I know is when I run for the Senate and when I talk to people at home, everybody likes tax credits. I have tried to provide as many tax credits and some relief for a variety of different individuals, and all I hear every day from this administration is tax cuts, tax relief, tax credits. I hear that all the time whether we have a surplus or deficit, whether we are at peace or war, whether we need to spur the economy or slow it down. All I hear from the administration is about tax cuts and tax credits. But there are Senators who come to the floor, might come to the

floor and say they are going to oppose them because they don't believe in tax credits. So I want to put nine of the tax credits that are in this bill in the RECORD.

Section 221. Modification of targeted areas in low-income communities for new markets tax credits is in this bill—$1$7 billion.

Section 245. Credit for maintenance of railroad tracks. Establishes a business tax credit equal to 50 percent of qualified expenditures for railroad track maintenance, capped at $3,500 per mile. So we have a credit in here for railroads as they maintain their tracks, and we cap it at $3,500 per mile. Now some good staff person could calculate how many miles of railroads we have and figure up how much that costs the taxpayers. Maybe it is a good thing, Mr. President. I don't know. But I will tell you what would be a higher priority for the constituents in my State—to send 1 mile, 1 mile of the railroad tax credit to one family so they could pay their house note.

No. 5. Appointment of small ethanol producer credit. Provision clarifies that the small producers' tax credit flows through a member of a cooperative.

No. 6. Section 339. Credit for production of low-sulfur diesel fuel. Provides that a small business refiner may claim a credit equal to 5 cents per gallon for costs paid to comply with the EPA sulfur regulations. The total production credit is limited to 25 percent of the capital costs to come from compliance with EPA requirements.

No. 7. Section 341. Oil and gas from marginal wells. Some of these are in the State of Oklahoma, some in my State of Louisiana. It adds the marginal well production tax credit. The credit is $3 a barrel of oil or .50 percent per thousand cubic feet of gas. The credit is not available if the reference price of oil exceeds $18 a barrel. The last I checked it was $50 a barrel. So we can give tax credits to oil companies and gallons. We can't give a paycheck to the Guard and Reserve to put fuel in their car.

Now, I am obviously upset, but I am going to try to be respectful, but I have to tell the truth, and that is the ugly, unvarnished, unedited, uncensored truth about this bill, and so we are going to stay here till Thursday. I am prepared to stay here morning, noon, and night. I am going to be respectful. I am not going to get into any arguments and I am not going to raise my voice above this level. I am not going to be talked down. I am not going to be spoken down to because I am not speaking for myself. I am speaking for the 5,000 men and women who left Louisiana and are overseas, and if I don't speak for them on this floor, they don't have anyone to speak for them, so I am not leaving.

How much time do I have remaining?

The PRESIDENT pro tempore. The Senator has 1 minute 16 seconds.

Ms. LANDRIEU. So the last minute and 16 seconds that I have this morning before we vote on cloture, which I will not be voting for, I want to ask my colleagues, whatever they can do in the next 4 days to help this I would appreciate it. I understand schedules are tough, and I am not going to make a comment if no one else says anything or shows up or signs a letter because I understand we have a lot of things going on, very important things, and I would not be the least bit disrespectful to my colleagues in this Chamber. But I want them to know, my colleagues, that that is why I am here, and I am not leaving. I am not leaving this Chamber. So I want to apologize ahead of time to anyone I inconvenience. I hope they understand.

I yield back my time.

Mr. REID. Mr. President, Senator HARKIN still has 5 minutes.

The PRESIDENT pro tempore. Not yet. There is 7 minutes in between the Senator from Louisiana and the next time bracket.

Mr. REID. Senator HARKIN has 5 minutes under the order.

The PRESIDENT pro tempore. The time used in making the agreements was 3 minutes, so unless the time is extended, Senator HARKIN has 2 minutes.

Mr. REID. Mr. President, when we started this morning we asked unanimous consent that the time that was taken by the leader would be agreed to. That was clearly in the RECORD. Would the Parliamentarian confirm that?

The PRESIDENT pro tempore. The Senator is correct. Under the current situation, Senator KENNEDY has 5 minutes, Senator HARKIN has the remaining time before 12:22, Senator BYRD has 20 minutes, and then Senator GRASSLEY and Senator BAUCUS have 30 minutes divided.

Mr. REID. Is that right, how much time Senator HARKIN has left?

The PRESIDENT pro tempore. No.

Mr. REID. How much time does Senator HARKIN have?

The PRESIDENT pro tempore. He has 2 minutes.

Mr. REID. I don't understand that. Why did we lose that time?

The PRESIDENT pro tempore. The Senator yielded, and in the course of that the time was used. Does the Senator wish to extend the time to the Senator——

Mr. REID. Senator GRAHAM will need 5 minutes, so I ask unanimous consent that he get 3 minutes and Senator GRASSLEY get an extra 3 minutes. So that will give Senator GRAHAM 2 minutes of HARKIN'S time plus the 3 minutes that I have asked be on our side and 3 minutes extra on Senator GRASSLEY's side.

The PRESIDENT pro tempore. And the time for the vote to be extended accordingly.

Mr. REID. Yes.

The ACTING PRESIDENT pro tempore. The Senator from Florida is recognized for 5 minutes, followed by the Senator from Massachusetts for 5 minutes, and following that time Senator BYRD for 20 minutes and thereafter Senator GRASSLEY and Senator BAUCUS will have 30 minutes divided, and after that time expires we will have the vote. Is there objection to that recitation?

Without objection, it is so ordered.

The Senator from Florida is recognized for 5 minutes.

Mr. GRAHAM of Florida. Mr. President, I want to express my admiration for the very strong and effective case the Senator from Louisiana made about what are our priorities, and that is the same issue I want to raise. I am going to talk about when these National Guard come home, will they have a job?

The statistics are that we are losing on average 5,000 jobs per day to foreign countries. That is the extent of outsourcing which is occurring in this country, and if there is one issue I believe the country is united on, it is that while there are things we cannot directly affect—we cannot directly affect that other countries are going to have lower wage rates and lower working conditions, we cannot affect the fact that some countries are going to have lower environmental standards—those you could describe as the consequences of the marketplace—but, Mr. President, we sure do not need to socialize the outsourcing of jobs by giving additional incentives for American companies to take American jobs to China or to any other foreign country, and that is exactly what this bill does. It socializes outsourcing by increasing substantially the tax incentives to move jobs out of America.

This proposal contains $42 billion over 10 years for a dozen or more provisions, all of which are aimed at moving jobs out of the United States. The actual cost is substantially more than that. Mr. President, just one provision of this matter which represents one-third of that total, $42 billion, do you know does not go into effect until the year 2009? You can imagine what the real 10-year cost of this proposal is going to be. This $42 billion in international tax changes to encourage outsourcing is greater than the net tax cuts we are providing to domestic manufacturers, and yet the whole purpose of this enterprise was to increase the competitiveness of American manufacturers.

Let me give you one example of what we are doing. We are going to provide that U.S. multinationals which have taken jobs in the past outside the United States and have earned a profit and now want to bring that profit back to the United States, that they are going to have a tax rate on those repatriated funds not at the 35 percent that their American counterparts pay when they give the work in the United States. Can you believe it, Mr. President, that we are going to tax those repatriated funds from foreign jobs, outsourced from America, at 5¼ percent? That is an absolute outrage. And let me just tell you a group that is not exactly averse to outsourcing because

it has publicly supported it is the President's Council of Economic Advisers. In a letter, which, Mr. President, I ask unanimous consent to have printed in the RECORD, dated October 4 from the Secretary of the Treasury, Mr. John W. Snow, here is what the Council of Economic Advisers says:

. . . analysis indicates that this repatriation provision would not produce any substantial economic benefit.

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

DEPARTMENT OF THE TREASURY,
Washington, DC, October 4, 2004

Hon. CHARLES E. GRASSLEY,
U.S. Senate,
Washington, DC.

DEAR CHAIRMAN GRASSLEY: As you work through the conference on legislation to meet our World Trade Organization (WTO) obligations and repeal the current foreign sales corporation/extraterritorial income (FSC/ETI) tax benefit, I write to offer the Administration's views on major issues raised by this important legislation.

First of all, I applaud your efforts to replace the current FSC/ETI benefit. This legislative process has been unique, in that the impetus for the legislation was a WTO ruling and subsequent EU sanctions. The Administration recognizes the challenges of moving a large tax bill under these circumstances and appreciates the efforts you have exerted to succeed.

In our Statements of Administration Policy (SAPs) to the House and Senate, the Administration emphasized its broad priorities for legislation to replace FSC/ETI. These include ending the European Union (EU) sanctions and promoting the competitiveness of American manufacturing and other job-creating sectors of the U.S. economy. As you know, the EU sanctions are escalating at a rate of 1 percentage point per month and will inflict an increasing burden on American exporters, American workers, and the overall economy. The Administration is committed to working with conferees to end these sanctions as quickly as possible.

The Administration believes that a conference report to replace FSC/ETI should be budget neutral. Both the House and Senate-passed bills include a myriad of special interest tax provisions that benefit few taxpayers and increase the complexity of the tax code. Legislation taking up more than 1000 pages of statutory language (or even 400 pages) goes far beyond the bill's core objective of replacing the FSC/ETI tax provisions with broad-based tax relief that is WTO-compliant. The Administration will work with the conferees to eliminate these narrowly crafted provisions.

The Administration will also work to make the tax relief in this bill as broad as possible to benefit all job creating sectors of the American economy.

The Administration has strong concerns regarding the so-called ''haircut'' provision in the Senate bill which would needlessly complicate the tax code and interfere with the ability of U.S. businesses and American workers to compete in the global marketplace. Worse, the provision would deter companies operating internationally from investing and creating jobs in the United States. More than 5 million Americans work for international companies at facilities here in the United States. The Senate haircut could endanger the growth of direct foreign investment into the U.S. and the jobs such investment creates in the U.S. The Administration urges the conferees to eliminate this provision from the conference report.

In addition to these provisions, the Administration also has concerns regarding the fairness of the repatriation provision included in both bills. This provision would offer international corporations a partial ''tax holiday'' for repatriating foreign income that is currently held overseas. U.S. companies that do not have foreign operations and have already paid their full and fair share of tax will not be able to benefit from this provision. Moreover, the Council of Economic Advisers' analysis indicates that the repatriation provision would not produce any substantial economic benefits. The Administration believes the $3 billion revenue cost of this provision could be better used to reduce the tax burden of job creators in the United States.

The Administration commends the House and Senate bills for including many provisions that close corporate tax loopholes and tax avoidance schemes. The Administration supports elimination of the Sales-In/Lease-Out tax loophole, but has concerns regarding efforts to apply this proposal retroactively. The Administration opposes attempts to codify the Economic Substance Doctrine. The Administration supports complete elimination of the ''SUV tax loophole,'' except for cases where there is a demonstrated legitimate business need for a large Sport Utility Vehicle.

The President's FY 2005 budget included energy tax incentives totaling $7 billion over ten years. These incentives were dedicated to alternative and renewable fuels, conservation, energy efficiency and emissions-free energy. During the energy bill conference, the Administration expressed additional support for certain tax provisions supporting the Alaskan pipeline, and encouraging investment in electric transmission. Finally, as part of the highway bill discussions, the Administration has expressed support for shifting the ethanol tax credit (VEETC) from the Highway Trust Fund to the general treasury. The Administration is concerned that the energy tax title in the Senate bill goes far beyond these positions and includes provisions whose revenue loss greatly exceeds policies that the Administration has previously agreed to. Energy tax provisions in the final bill, if included at all, should be limited to only those provisions mentioned above that reflect the President's priorities of environmental protection and energy conservation and maintain needed fiscal discipline.

The Administration opposes the Senate amendments which effectively vitiate the Department of Labor's new rules to improve the nation's outdated overtime laws. The Department's revised rule strengthens overtime protections for 6.7 million low-wage workers by simplifying complex eligibility tests and by raising salary thresholds that have not been changed in almost 30 years. In contrast, the Harkin amendment would lock in the old overtime standards and part of the new overtime standards, requiring each job to be analyzed twice, once under the old rules, which are no longer in effect, and once under the new rules proposed by the Department of Labor which would have been in effect for months. Consistent with past Administration positions, if the Harkin amendment or other limitations to the Department of Labor's rule making authority is included in the final version of the FSCETI legislation, the President's senior advisors would recommend that he veto the bill.

The Administration is open to a tobacco buyout as long as it meets certain conditions. We believe the buyout must end all aspects of the tobacco program and not replace them, should do so at a reasonable cost that is fully offset, and should be consistent with WTO rules. The Administration promises to work with interested parties to craft a tobacco buyout that ends federal subsidies of tobacco growers while meeting these criteria.

On behalf of the Administration, let me express our willingness to provide assistance during the deliberations of the conference committee. I look forward to working with you to enacting legislation that removes the threat of escalating EU sanctions and encourages economic growth and job creation here at home.

Sincerely,

JOHN W. SNOW.

The administration believes the $3 billion of revenue cost of this provision could be better used to reduce the tax burden of job creators in the United States.

That is what the administration says about just one of these dozens of provisions.

I have been here for 18 years. Mr. President, you have been here much longer, but I cannot imagine a proposal that would be more repugnant to the American people and more averse to our long-term economic interests.

We have a major challenge in this country. How does the United States remain globally competitive with a standard of living that in some cases is 10 times that of our competitors? We certainly are not going to do it by socializing with our tax dollars the movement of our jobs—the jobs of those National Guardsmen who will be coming back from Iraq and other foreign countries.

This is only one of the many deficiencies in this legislation, but it is a core issue that goes to the global future of the economy of the United States and the future of those men and women who are returning to their jobs from Iraq.

The PRESIDENT pro tempore. The Senator from Massachusetts is recognized.

Mr. KENNEDY. Mr. President, ours is a government of the people, by the people and for the people. And we should be judged as U.S. Senators in fulfilling that commitment by how well we put the needs of average Americans first. Middle class families are the backbone of America. Our first duty is to them—for a secure nation, for good jobs, for healthy families, for good schools, and safe neighborhoods.

This bill betrays that solemn duty. On issue after issue, page after page, it puts the interests of big corporations ahead of the public interest—ahead of the hopes and dreams and everyday needs of the middle class.

It puts the profits of big tobacco corporations ahead of the health of our children. The Senate adopted the proposal by the Senator from Ohio, Mr. DEWINE, to prohibit tobacco companies from marketing cigarettes to children.

There is absolutely no doubt that tobacco companies are spending $11 billion each year to lure our children into smoking. Every day, 5,000 children smoke for the first time. More than one-third of those will be regular daily

smokers by the time they graduate from high school.

What future do they have to look forward to? Years of battling cancer? A painful and premature death? Never getting the chance to watch their own children grow up and get married? Never living long enough to bounce their grandchildren on their knees? Is that what parents want for their children?

Tobacco use kills more Americans every year than AIDS, alcohol, car accidents, murders, suicides, and fires combined. Nearly 1 in 3 cancer deaths, and 1 in 5 deaths from heart disease are tobacco-related.

In fact, smoking is the No. 1 preventable cause of death in America. We had a chance to bring to an end the largest disinformation campaign in the history of the corporate world. We had a chance to save our children from this scourage—to save them from the clutches of the tobacco companies. But the tobacco companies carried the day in Congress and the House leadership said no.

Is that what ''the people'' want? Is that government ''for the people''? I don't think so.

The Senate passed an amendment by the Senator from Iowa, Mr. HARKIN, to stop the Bush administration's misguided efforts to eliminate your overtime pay. That is right. President Bush says to millions of middle class workers that they no longer deserve the right to overtime pay. And the Harkin amendment would have stopped the Bush administration from doing that.

This comes from an administration that is already costing us jobs. In fact, we learned on Friday that President Bush will be the first President since Herbert Hoover and the Great Depression over 70 years ago to lose jobs on his watch—a total of 1.6 million private sector jobs. And now, on top of that, the President wants to reward his special interest friends by taking away overtime from more than 6 million hard-working Americans. On five separate occasions, the House and the Senate have voted to preserve overtime protections, but the While House stripped them from this bill.

Make no mistake—overtime cuts are pay cuts.

Is that what ''the people'' want? Is that government ''for the people''? I don't think so.

Finally, this bill outsources jobs.

Middle class families across America live in fear every day that their good jobs will be shipped overseas. The people expect us to protect their jobs. But this bill provides a stunning $42 billion in new tax breaks for multinational corporations that will make it easier for them to export your jobs.

Imagine that. You are working had every day, playing by the rules, trying to provide for your family, and faithfully paying your taxes. And this bill uses your tax dollars to ship your job overseas.

This bill is of the corporations, by the corporations, and for the corporations. It is a lobbyist's dream and a middle class nightmare. It is an embarrassment to representative government. I urge my colleagues to reject it.

The PRESIDENT pro tempore. The Senator from West Virginia is now recognized for 20 minutes.

Mr. BYRD. Mr. President, I thank the Chair. I thank the distinguished President pro tempore of the Senate, the honorable TED STEVENS, a great Senator from the State of Alaska; as a matter of fact, the Senator of the 20th century for the State of Alaska.

On this Sabbath Day in which the Senate convenes in an extraordinary session, I read from the King James Version of the Holy Bible, Exodus 35, verses 1 through 3.

> And Moses gathered all the congregation of the children of Israel together and said unto them, These are the words which the Lord hath commanded, that ye should do them.
>
> Six days shall work be done, but on the seventh day there shall be to you an holy day, a sabbath of rest to the Lord: whosoever doeth work therein shall be put to death.
>
> Ye shall kindle no fire throughout your habitations on the sabbath day.

I now read from the Ten Commandments, again King James Version of the Holy Bible, Exodus 20, verses 8 through 10.

> Remember the sabbath day to keep it holy.
>
> Six days shalt thou labor, and do all thy work:
>
> But the seventh day is the sabbath of the Lord thy God: in it thou shalt not do any work, thou, nor thy son, nor thy daughter, thy manservant, nor thy maidservant, nor thy cattle, nor thy stranger that is within thy gates:
>
> For in six days the Lord made heaven and earth, the sea, and all that in them is, and rested the seventh day: wherefore the Lord blessed the sabbath day, and hallowed it.

That is the Fourth Commandment passed down from God to Moses and from Moses to the Israelites. Those words are holy for people of many faiths. Christians and Jews are bound to follow the Ten Commandments. Muslims, too, hold dear a similar lesson from the Koran, and scores of millions from that faith also make strict observance of their own day of rest.

But today the Senate has been called into session despite the words of the Fourth Commandment. Moreover, the matter being debated today is no question of life or death. There is no dire emergency that brings us here on this Sabbath Day. There is no emergency that demands the elected representatives of the American people place the pursuit of their work over the importance of their faith. No, the Senate has been called in on a Sunday for a mere procedural vote. What would be the consequences if the Senate were not called into session today for a single vote on cloture? It would only mean that the matter before the Senate might take 1 day longer to complete. What a tragedy that would be.

Must we ignore the sanctity of the Sabbath just to call the Senate into session and have Senate staff come in from their homes throughout the nearby area in order to cast one procedural vote? The Senate should not be in this position. Our staffs and their families, our own selves and our families should not be in this position.

This Chamber, on the whole, has an excellent record for accommodating the faiths of those who serve the American people. It has become routine for the Senate to temporarily suspend its business so that Senators, both Christians and Jews, can carry out their religious services and their religious observances. In fact, I suggested yesterday that all the Senate would need to do would be to delay the vote until Sunday, today. That would be in accordance with the observing of the old Sabbath. That is when the Sabbath traditionally ends. If only there were a delay in this afternoon's vote by 5½ hours, Senators would not have been forced to choose between our responsibilities to our Nation and honoring our Sabbath, our day of rest and prayer. This suggestion was rejected.

What is the rush to have this particular vote on a Sunday afternoon? Most of us would like to have observed this Sunday afternoon and this morning prior to noon with our families, would like to have observed the opportunity to go to the church or the churches of our faith. What is the urgent need to keep Senators and our staffs away from their families on this, a day of rest? What message does this send to the American people?

I do not believe a Sunday session of the Senate for such a trivial matter as a procedural vote sets a good example for Christians around this country or Christians around the world. It does not set a good example for anyone who wishes to observe the Fourth Commandment. And for what?

The Senate has been thrown into too much confusion as we rush to finish too much business in too short a time. I have said repeatedly the Senate should not be rushed in its business, especially on complex matters of great national importance. It is a disservice to those whom we are elected to represent.

Now we see that there is another side of that coin. The uncontrollable zeal to get business done as soon as possible has resulted in a decision that is a disservice to those who work in this Chamber. Because of this poor planning, many of us and our families are being forced to give short shrift to our observance of the Sabbath. That is not right.

I am a Christian. I don't claim to be the best Christian around. My mom and dad were great Christian people. They had never been to school very much. I have heard someone on the campaign trail say he is the first in his family line to graduate from college. Let me say I am the first to enter the third grade in all of my line, my parentage, my ancestor line.

I can say this, though: My old dad and mom who raised me—I was an orphan at the age of 1; my mother died in the influenza epidemic of 1918—the

kind people who raised me were very religious. They didn't carry it around on their sleeve. They did not go around criticizing other people. They practiced. I can remember many times after I had gone to bed hearing my Christian mother on her knees, down in another room, praying, praying, praying. That old coal miner dad who was my uncle—I called him my dad—he was the only dad I ever knew, really. He was a coal miner. When he died and left this world he didn't owe any man a penny. He never criticized anybody else. I didn't hear him ever in all my years use God's name in vain. So those were my Christian parents. I was raised that way.

I profess today to be a Christian. I don't profess to be good. The Bible says no man is good, so I don't say that I am good. But I am a Christian. And there are millions like me in this country and around the world who believe that we should keep the Sabbath Day holy and remember it.

In this modern world of 24 hours a day, 7 days a week commerce and enterprise, keeping the Commandments and remembering the Sabbath, to keep it holy, may seem an antiquated notion to some. But it is, nevertheless, a central pillar of many faiths, and it reflects the principle on which this Nation was founded: ''One Nation, under God.''

Now, I do not try to press my faith on anybody else. I am like Samuel Adams, a few years before the Constitutional Convention, when he said: I can listen to any prayer—any prayer. And so can I. I can listen to the Muslim prayer. I can listen to the prayer of the Jewish people. I can listen to the Catholics as they pray. I am willing to listen to any prayer. I do not attempt to press my religion on anybody else.

But I think we as a Senate, here in the eyes of the American people and the world on the Sabbath, do not give a very good impression. We ought to set the example. We in the Senate ought to set the example.

Of course, if the ox or the ass were in the pit, as the Bible says, then pull him out if it is on the Sabbath. But the ox is not in the ditch. That is not why we are here. We are not here because of some dire emergency that threatens the lives of the American people. This is not a dire emergency. This could easily have been put over until tomorrow.

I have been the majority leader of this Senate in some years past. I have been the minority leader of this Senate in some years past. I know something about the rules. I may have forgotten more than some will ever learn, but I can remember the powers of the majority leader. And it is within any majority leader's power to put this matter over until Monday. It could have been done yesterday. And it could still be done. But we are here. The staffs have been called out now. Senators are here. And so we have to observe what the leadership has ruled. We are here. But I would say, it was unnecessary.

I am sorry that the Senate is in today. We would not have lost anything by waiting until tomorrow. But it has been done.

Mr. President, how much time do I have left?

The PRESIDING OFFICER (Mr. GRASSLEY). The Senator has 4 minutes 20 seconds.

Mr. BYRD. I thank the Chair.

Mr. President, we hear a lot about religion these days. I say, let's practice a little of it here in the Senate and on the campaign trail. I hope the Senate in future years will not repeat this mistake of unnecessarily sacrificing the observance of the Sabbath on the altar of political expediency. We could have done better.

We waste a lot of time here. There were many days when we could have been in and we could have been doing the work of the people, the work of the Senate, but we chose not to be in. These are workdays I am talking about, many of them throughout the year that is past, some of them recent. The work could have been done. It was not necessary to back this work up to the point that we have to come in here on a Sabbath—on a Sabbath—to vote. And for what? A mere procedural matter.

Mr. President, I thank the Chair and I thank all Senators.

I yield the floor.

The PRESIDING OFFICER. The Chair recognizes the Senator from Alaska.

Mr. STEVENS. Mr. President, I thank the current occupant of the Chair for yielding me 5 minutes from this bill.

DELAY OF CONFERENCE REPORTS

Mr. President, I come to the Senate once more to ask that the Senate consider what is delaying the Homeland Security bill and the Military Construction bill which carry with them the money for the hurricane recovery in the southeastern part of this country, including Florida.

I first want to say to my good friend from West Virginia, he reminds me very much of the comments my grandmother used to say to me about doing things on Sunday. And we tried to observe the commands of the Bible.

This is not the first Sunday since I have been in the Senate, in 36 years, that we have had to meet. I, too, regret we have to meet on Sunday. But we are meeting today primarily because of the objection of one man. We should have taken up the Military Construction bill and the Homeland Security bill when it arrived from the House last evening. The House of Representatives had passed both of those bills in the course of about 2 minutes, and not one person spoke against those bills. It was a unanimous vote on both those bills.

They came over here—and I congratulate the minority leader. Yesterday, when we opened the Senate, he said, without question—without question—we should pass the Homeland Security bill and the Military Construction bill before we leave.

The impact of this is an astounding delay because of one Senator, the other Senator from Iowa, Mr. HARKIN, who is objecting because of an offset that was used in the Military Construction bill to enable us to proceed with the drought provisions in the bill.

For the first time, we are putting up money to assist the people who are suffering around the country, primarily farmers, from drought. We needed an offset. This is the same offset we took once before. And we straightened out the program after that borrowing of budget authority was used effectively.

Now, I told the Senate last night I was informed that last evening FEMA ran out of money. On October 1, it had $836 million, including a $500 million carryover from fiscal year 2004. There was a $336 million apportionment under the continuing resolution, which was intended to last until November 20, but because of the demands in Florida, they have run out of money. And we want to see these bills passed.

We and the leadership on both sides tried to clear this bill. We are primarily here voting on this cloture now rather than tomorrow because we had to come in in order to qualify cloture votes for tomorrow. We will not vote on the Military Construction and Homeland Security bills until tomorrow because one Senator—one Senator—wants to delay them.

Now, I want the Senate to know—this is my last year as chairman of the Appropriations Committee—we have worked hard with Congressman YOUNG on the other side, who is from Florida and is very disturbed about the delay. We worked our committees, and worked them literally night and day, particularly the staffs, to get these bills ready to move. And the Senator from West Virginia says we should only be working if it is an emergency. Well, it is true there are emergency bills right behind this bill.

I would hope we would get cloture and pass this bill as quickly as we can so we can move to the Military Construction bill. We cannot interfere now. We cannot call up the Military Construction bill or the Homeland Security bill until this process is over.

But I urge the Senate, every Member of the Senate, to talk to Senator HARKIN and ask him not to delay these bills any longer. These bills will take time to prepare and get what we call enrolled, and then they will be signed by the Speaker of the House and by the Vice President or myself, and they will go to the President. That could be done today. That could be done today, if this one Senator will relent in this procedure to delay these two bills.

I do not understand why the Homeland Security bill has been delayed at all. We were ready to put it in what we call wrap-up last night. The Senator from West Virginia and I and all those connected with it said: Let's just pass this. It has passed the House without objection at all.

The matter was reviewed by the Senator from Arizona. I am pleased to say

for one time we are in total agreement. That bill does not have to have any respecification of anything we put in that bill that would raise the objection of my friend from Arizona. And he is my friend, despite our disputes.

But I tell the Senate, it is time to pass the Military Construction bill and the Homeland Security bill today.

The PRESIDING OFFICER. Who seeks recognition?

The Senator from West Virginia.

Mr. BYRD. Mr. President, I believe I have 2½ minutes left.

The PRESIDING OFFICER. The Senator does have 2½ minutes left.

Mr. BYRD. Mr. President, may I say to my friend, the distinguished Senator from Alaska, who is the President pro tempore and the chairman of the Appropriations Committee, this man has, throughout the year, sought to keep the Senate on schedule and to not only have the committee report out all of the 13 bills but to have the Senate pass them. I think if all of us had worked as diligently as the Senator from Alaska to get the work done, we would not be here today.

Now, I hesitate to mention a Senator by name—the distinguished Senator from Alaska has done that—and that Senator is not on the floor. But let me say, whether we like it or not, that Senator was within his rights.

Mr. STEVENS. Yes, he was.

Mr. BYRD. And the Senator from Alaska might be in the same position one day, and I may be.

The blame here should be placed in a manner on the whole Senate and particularly, I have to say, the leadership of the Senate. The Republican leadership is in control so I think they bear the greatest responsibility. As I said yesterday, we all are at fault a little bit. But my complaint is not against a Senator. My complaint is the way we have done our work all year long. We dilly dallied, delayed, and had several days out of session when we could have been in, could have been doing our work. That goes for our recent times as well.

I say there is where the overall fault lies. I am sorry that because of that, we have been backed up with our backs up against a timeline here when we are about to go out for a Presidential election. And we should not have been put in this position. We should have done this work earlier. I say it was wrong to come in on the Sabbath Day. It didn't have to be done. I regret it.

I thank the Chair and all Senators.

The PRESIDING OFFICER (Mr. GRAHAM of South Carolina). Who yields time?

Mr. GRASSLEY. Mr. President, I yield the Senator from Oklahoma 5 minutes.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. NICKLES. Mr. President, I thank my colleagues. I want to speak a little bit about the conference report and maybe a little bit about Senator LANDRIEU's amendment.

First, I wish to compliment Senator GRASSLEY and Senator BAUCUS for their leadership on this bill. The FSC/ETI bill was a very complicated bill. The Senate provisions alone—there were 276 provisions—dealt with about $180 billion of tax increases and tax cuts, a very complicated bill, very confusing bill. It had international provisions. But it was very important that we move forward, and we moved forward to basically—I started to say—become compliant with the World Trade Organization because they were imposing sanctions on U.S. exports, fees of 12 percent escalating 1 percent per month going up to 17 percent. So it was important that we resolve that problem.

Most people think the conference report solves that situation. I compliment them for it. The bill that came back from conference was a better bill than left the Senate—frankly, a much better bill. There are a lot fewer provisions. There were many amendments that were left out. I know the Senator from Louisiana is upset about her amendment being left out. There were hundreds of amendments left out, some of which have a lot of merit, some probably didn't have merit. I don't happen to agree with her amendment, and I want to touch on that for a second.

First, I want to finish on the FSC/ETI bill. The underlying premise of the FSC/ETI bill—which I am going to support, and I urge our colleagues to vote for cloture so we can finish this bill—is that we are going to give a benefit to manufacturers, a lower corporate rate than other corporations. I happen to disagree with that. I used to be a manufacturer. I used to run a manufacturing company, Nickles Machine Corporation. We made engine parts. We sold them around the world. Manufacturers get a lower rate, and we do it in this bill in the form of not a rate reduction but in the form of an exclusion of income. I think a rate would be a much simpler way to go, and I think it should apply to all corporations.

What we do in this bill is, we give an exclusion for a certain amount of income, I think 3 percent the first 2 years, 6 percent the next 3 years, and then 9 percent beyond that. The net effect of that for most corporations is, the corporate rate would go into effect 34 percent and then 33 percent and then 32 percent, if you are a manufacturer. If you are not a manufacturer but happen to be a corporation, in other words, you do professional services, maybe an attorney or maybe a doctor or something, or you have an accounting firm or you have a financial firm, if you have financial services, you are going to be taxed at a higher rate.

I think we should have a uniform corporate rate. It is a mistake. You have a lot of companies that do both. They are a manufacturer and they provide financial services or they provide other services. So you are going to find them having to segregate their income—this part is manufacturing, this part is financial or other services. That is going to mean asking for a lot of audits, a lot of confusion, and maybe problems with the IRS and future Congresses. Future Congresses also will be dabbling with the definition of manufacturer because there are a lot of people defined in this bill as manufacturers that a lot of us wouldn't think of as manufacturers; i.e., individuals involved in architectural engineering, or individuals or companies that are construction or software companies or oil companies or extraction companies. There are software companies, the film industry. You have a lot of industries that aren't normally thought of as manufacturing and are now defined as manufacturing.

When people realize there is a 10-percent lower corporate rate if you are defined as a manufacturer, my guess is you will have a lot of future interest and amendments. The lobbyists will be very big trying to make sure that whoever their client is is defined as a manufacturer. So the number of manufacturing jobs, which has been on a fairly steady decline for the last 40 years—it has bounced up in the last year—will increase dramatically, not because there are more manufacturing jobs, but because more jobs are defined as manufacturing. I don't think that is good policy.

I have mentioned that. I know Chairman GRASSLEY and Senator BAUCUS are well aware of my concerns. I tried to fight that fight along with Senator KYL. We were not successful. We tried every way we could, but we didn't win on that one. But it is important that we become WTO compliant. It is important that we pass a bill. I don't think we are going to solve the problem I am talking about in differentials in the next 3 months or, frankly, the next 6 months. So I urge our colleagues to vote in favor of it.

In relation to the Landrieu amendment, her discussion on it, I appreciate her passion. But no one on her side raised this amendment. I sat in the conference for days. She had her chance. There were hundreds of amendments that were not adopted. I don't happen to agree with the substance of her amendment. But everyone was entitled to have their chance. Chairman GRASSLEY insisted on having the entire Finance Committee represented in the conference. I compliment him for that. It was a very open, fair conference. All Senators who were on the Finance Committee were represented, were there, or could have attended. So again, sometimes you don't win on your amendments.

I compliment again Senator GRASSLEY and Senator BAUCUS. I urge our colleagues to vote in favor of cloture.

RECUSAL

Mr. KOHL. It has come to my attention that Section 886 of H.R. 4520, the Jumpstart Our Business Strength (JOBS) Act, applies to the ownership of sports franchises. As owner of the Milwaukee Bucks basketball team, I have serious concerns that this provision creates a potential conflict of interest.

While I was previously unaware of this provision as one of the many tax simplifications included in the bill, I have decided to recuse myself from further votes on this issue.

Mr. NELSON of Florida. Mr. President, I rise today to support passage of the JOBS bill conference report. This legislation is a positive step toward alleviating the pain put on the manufacturing sector by the World Trade Organization tariffs, providing domestic companies with a sizable tax deduction that will help to create jobs, and simplifying our international tax regime.

Most importantly, though, it pays for itself. By eradicating a number of abusive tax shelters, this bill does not add to our deficit; it plugs holes that have been exploited in the Tax Code while ensuring this important tax relief is not at the expense of future generations.

I am also quite partial to a provision aimed at rectifying an inequity that has existed for over 18 years. The residents of the seven States without an income tax have been treated unfairly under the Tax Code since 1986. I applaud the conferees for including a temporary 2-year benefit for citizens of these States, allowing them to deduct the State sales taxes they pay from their Federal income tax liability. I look forward to working with my colleagues to once again make this benefit permanent, but I thank the conferees for including this important tax relief for the citizens of Florida and the other States without an income tax.

One part of the Senate-passed bill that did not make it into the final package would have dealt with our National Guard and Reservists who are performing so admirably overseas. I am deeply troubled by the omission of tax relief for the employers continuing to pay the salaries of their employees who have been called to active duty in Iraq and Afghanistan. This was inexplicably left on the cutting room floor in conference, and I plan to work with my colleagues to ensure this oversight is remedied. We owe this tax relief to the patriotic employers who have helped to ease the financial burden of serving overseas by continuing to pay their active duty employees.

I also am troubled by the absence of another Senate-passed component to the bill: FDA regulation for tobacco. This issue has received strong support in the U.S. Senate, so the House acted unilaterally, ignoring the will of the Senate and the bipartisan agreement that any buyout also would include regulation of tobacco.

Another aspect of this that disappoints me is the tobacco buyout assessment provision that emerged from conference. This rule places a greater burden on Florida companies, specifically Florida cigar manufacturers, than cigar manufacturers from other States. This new provision creates an assessment on cigar manufacturers to pay for the buyout of tobacco farmers even though they do not use the types of tobacco being bought out. It amounts to a $282 million price tag, leaving Florida companies to pay more than 75 percent of this assessment.

There are a number of other small issues in this bill that may be overlooked, but which mean a great deal to local economies. One that will have a profound effect on Florida deals with motorsports facilities. As you know, Florida is home to a great racing tradition and to the world famous Daytona International Speedway, as well as the Miami-Homestead International Speedway, and a host of other smaller race facilities. For decades, these tracks have been allowed to depreciate their property over 7 years. Recently, however, the IRS has questioned this classification.

I am delighted the FSC/ETI bill encourages continued investment by codifying the 7-year classification from the date of enactment through January 1, 2008. This is an excellent start. I am hopeful the IRS will recognize the legislative intent of this body and reconsider any new interpretation of the law. The action taken in this tax bill indicates the revenue procedures were not clear, so Congress acted to provide clarity.

I urge Congress to revisit this issue as soon as possible to provide the ongoing certainty that is needed to plan substantial investments in new track construction and expansion.

As with any conference report, I am not completely satisfied with this package. It is not perfect. There are omissions. It does not go far enough in some respects, and I would argue it goes too far in others. But legislating is all about compromise, and all in all, this bill is a good compromise. It adhered to the tenets of the Senate-passed bill, and will achieve its stated goal—finally ending the tariffs that have so burdened American manufacturers.

I am comfortable rising in support of this tax relief package, and I am confident any inadequacies will be addressed in due time.

Mr. REID. Mr. President, the Senate FSC-ETI bill contained $19 billion in energy tax incentives that supported the diversification of the Nation's energy supply, conservation, and efficiency.

Although few of those provisions survived the House-Senate conference, I am pleased that the conference report extends and expands the Section 45 production tax credit for renewable energy resources.

My thanks to Senators GRASSLEY and BAUCUS, as well as 36 Senators who recently joined me in a letter to conferees urging the adoption of this very important renewable-energy provision.

The Section 45 production tax credit works.

Siince its initial adoption in 1992, wind energy has become the fastest growing energy source in the world.

Other renewable energy resources like geothermal, solar and biomass energy will now be able to enjoy that same growth potential.

We know that renewable energy can provide a steady supply of electricity that is made in the USA.

We know it will spur economic investment and new technology, and create thousands of jobs.

According to the Department of Energy, tripling geothermal production by the year 2010 would stimulated $61 billion of domestic investment, create 1.6 million person-years of new employment, and add $180 million to State and Federal government treasuries from royalties.

The Western Governors Association projects the Department of Energy's initiative to deploy 1,000 megawatts of concentrating solar power in the southwestern area of the United States would create approximately 7,000 jobs and estimated expenditures of more than $2 billion in the next decade.

We know it can protect our environment and reduce global warming. And we know it can help reduce our dependence on oil from the Middle East.

The renewable energy resource is unlimited.

Once we build the facilities, the fuel is free.

In simple terms, ''batteries are included'' with renewable energy facilities.

The sun will shine for a billion years, the wind will blow as long as our planet survives, and the heat of the Earth is the most abundant resource in the world.

My State and many others are rich in renewable energy.

Nevada is the Saudi Arabia of Geothermal energy.

I am proud that Nevada has set some of the highest goals in the Nation for developing renewable energy. We are going to steadily increase our electricity generated from renewable sources toward a goal of 15 percent by 2013.

The Section 45 provision in the FSC–ETI bill is an important step on the road to diversifying the Nation's energy supply by increasing our use of renewable energy resources, but our job is not done.

This provision only extends the Section 45 production tax credit for 15 months.

We need to extend the Section 45 production tax credit for renewable energy resources from 15 months to a minimum of 5 years.

It is also important that we work to include tradeable credits to public power utilities and rural electric cooperatives, which serve 25 percent of the Nation's power customers, by allowing them to transfer their credits to taxable entities.

I will work to make that happen in the next session of Congress.

Once again, I want to thank the managers of this bill for shepherding the expansion and extension of the Section 45 production tax credit in this legislation.

We must diversify our Nation's energy portfolio with clean, renewable energy resources. We must accept this commitment for the energy security of the U.S., for the protection of our environment, and for the health of the American people.

Mr. KYL. Mr. President, today the Senate is considering the conference agreement for H.R. 4520, the American Jobs Creation Act of 2004. I voted against this legislation when it was reported out of the Senate Finance Committee and again when it was approved by the full Senate, so I would like to explain why I am reluctantly supporting the conference agreement.

I was a conferee for this conference agreement and am supporting it for four reasons. First, the legislation makes necessary improvements to the way the United States taxes foreign-source income. These changes are a good first step at rationalizing the way we tax U.S.-based multinational companies. Second, the conference agreement dropped many of the tax increases that were included in the Senate-passed bill that would have inappropriately raised taxes on many U.S. businesses. Third, Senator GRASSLEY has committed to work with me on broad-based corporate tax reforms next year. Finally, I am supporting the conference agreement because it is important to come into compliance with our international obligations.

The conference agreement includes some very worthwhile provisions. Most importantly, it reforms and simplifies the way we tax U.S.-based multinational businesses. Under current law, U.S.-based multinational companies are subject to a tax system that was designed in the 1960s, that we have failed to modernize as global business transformed and grew, and that has only been modified when Congress needed to raise revenues. As such, the system is inconsistent and inefficient and subjects U.S.-based companies to double-taxation, all of which put our companies at a disadvantage vis-à-vis their foreign competitors. The conference agreement fixes a number of these problems.

First, the conference agreement addresses two very serious problems with our foreign tax credit system. The U.S. tax system is a worldwide system, meaning we tax the income of U.S. taxpayers no matter where it is earned. The problem with such a system is that income is double-taxed, once by a foreign jurisdiction and again by the United States. Because many other countries only tax income that is earned within their borders, U.S. companies face double-taxation while many of their foreign competitors do not. To avoid this problem, the U.S. gives taxpayers credits for taxes paid to a foreign jurisdiction, which are used to offset U.S. tax liability. If the system worked perfectly, the net result would be that corporate income is taxed one time at the U.S. rate of 35 percent. The problem is that the system does not work perfectly; there are so many restrictions on the ability to use foreign tax credits that, in practice, foreign earnings are often double-taxed. Further, under current law, unused foreign tax credits can only be carried forward 5 years, after which time they expire, resulting in permanent double-taxation. The conference agreement does two things: First, it eliminates many of the restrictions on using foreign tax credits by reducing the number of ''baskets'' that the different types of credits are segregated into from nine to two, making it much easier to use foreign tax credits. Second, the conference agreement extends the carryforward period to 10 years so that taxpayers have twice as long to use foreign tax credits before they expire. Both of these changes are very important and are a big part of the reason I am supporting the conference agreement.

The conference agreement also reforms the ''interest allocation rules,'' which can have the perverse effect of making it more expensive for U.S. companies to build new U.S. facilities by restricting a company's ability to deduct interest payments used to finance the construction of such facilities. The conference agreement gives companies a one-time choice of how to allocate and apportion their interest expenses so that if a company elects the new ''worldwide fungibility'' approach instead of current treatment, interest expenses incurred in the United States would only be allocated against foreign-source income in certain restricted circumstances. This also makes it less likely that U.S. companies will have their use of foreign tax credits restricted, thereby alleviating the problem of double-taxation. Like the foreign tax credit reforms I mentioned earlier, the interest allocation reforms are another reason I am supporting this legislation.

I want to express my disappointment with the centerpiece of this legislation, however. I continue to be concerned that the manufacturing deduction represents poor tax policy because it establishes for the first time a lower tax rate for one segment of our business community—manufacturing—while continuing to impose the higher 35 percent rate on all other U.S. businesses. Sound tax policy should be fair and neutral and the manufacturing deduction is neither. I expect that this provision will cause a great deal of ''game-playing'' as companies strive to define as much of their activity as possible as ''manufacturing'' to more greatly benefit from the deduction. As a result, I believe that the Treasury Department is correct when it predicts that we will see an increase in audits and litigation as a result of this provision.

I noted that, for the first time, Congress has established a bifurcated corporate tax rate system in this legislation. Non-manufacturing companies also create good jobs, contribute to our growing economy, and compete with lower-taxed foreign companies just like U.S. manufacturers, yet these companies do not see tax rate relief in this legislation. It would have been far better to have provided a corporate rate reduction across-the-board for all U.S. companies. This would have avoided the game-playing, would have been far simpler for taxpayers and the government to administer, and would have made the United States a more attractive place to do business. This last point is important. Our combined federal and state tax rate is 40 percent, while in Asia the rate is 30.4 percent, and in Europe the rate is 27.7 percent. Our trading partners have been aggressively cutting their corporate tax rates. It is time the Congress stop trying to set industrial policy through targeted tax preferences and confront our high corporate income tax rate directly. I urged my colleagues to take this approach, and while many of my colleagues agreed with me, this effort did not prevail. I predict that, in time, Congress will repeal the manufacturing deduction and replace it with a corporate tax rate reduction. Canada had a similar manufacturing deduction in place and found it to be so complex, subject to abuse, and such a source of tax controversies that Canada eventually replaced it with a lower corporate tax rate.

Because of my serious concerns about the manufacturing deduction, I am pleased that Senate Finance Committee Chairman GRASSLEY has agreed to work with me on a review of our corporate tax structure, including not only corporate income tax rates, but also on making the lower tax rates on dividends and capital gains permanent. I appreciate his offer and look forward to working with him on this important issue.

The conference agreement drops some of the special interest tax provisions that were included in the Senate-passed bill. I am disappointed, however, that other tax subsidies, such as various tax subsidies for electricity production, were retained in the conference agreement. In this era of budget consciousness, I would much prefer to use scare revenue offsets to enact meaningful, pro-growth, broad-based tax reforms that will have a positive effect on the overall U.S. economy. While some of these provisions might be justifiable, we should always keep in mind that the purpose of our tax system is to raise revenue for the Federal Government in the most efficient means possible, and not to reward special interests. I firmly believe we should focus on broad-based tax relief that provides growth-oriented incentives. This would make our system of taxing business income far more efficient for the Federal Government and for taxpayers alike, and most importantly, it would foster greater economic growth and help businesses create jobs. The conference agreement we consider today largely provides the opposite result and thus accentuates the

great need for tax reform. The President has expressed support for comprehensive tax reform and I fully intend to work with him on that project.

This conference agreement is revenue neutral, which, in itself is not a bad thing, but should not be a prerequisite for tax legislation. Revenue neutrality means that there are as many tax increases as tax cuts, and we must be very careful about increasing taxes. I am pleased that in the conference committee we were able to eliminate several of the more troubling provisions we euphemistically refer to as revenue raisers, including the codification of the ''economic substance doctrine'' and the taxation of certain settlements, fines and penalties. Quite simply, these are tax increases—sometimes warranted, if we are closing unintended loopholes, but tax increases nonetheless. Congress should approve tax changes to improve the conditions of the economy and to leave more money with the taxpayers who earned it and should not be bound by strict rules of revenue neutrality. We must remember that tax cuts and spending are not the same and do not have the same effect on the economy or on the Federal budget. Tax cuts allow American families, business owners, and investors to keep more of their own money, which encourages economic activity. Increased economic activity brings additional tax revenues into the Federal government, thus improving our budgetary situation. Unlike tax cuts, new spending requires the government to take control of a bigger slice of the economy, which hinders economic growth. I encourage my colleagues to refuse to be bound to ''revenue neutrality'' for its own sake, but to pursue rational tax policies on their merits.

Finally, this legislation repeals our export tax subsidy that was judged to be illegal by the World Trade Organization, WTO. While I have serious concerns about the commitments made by our negotiators that led to this result, the United States nonetheless must abide by the agreements we make. Repeal of the export subsidy will bring the United States into compliance with our international obligations and this will end the tariffs the European Union has imposed as a result of the dispute on many U.S.-made products, including products made in my State of Arizona.

While I am supporting the conference agreement, I want my colleagues to know that I am very serious about my commitment to pursue policies that provide broad-based, pro-growth, supply-side tax incentives, rather than targeted tax preferences or misguided industrial policies.

Mr. SANTORUM. Mr. President, I wonder if the distinguished chairman of the Finance Committee might respond to a colloquy. I specifically have a question about the formula used to calculate the financial statement limitation for computing the amount of permanently reinvested earnings eligible for repatriation.

Mr. GRASSLEY. I would be glad to entertain a question from the Senator from Pennsylvania.

Mr. SANTORUM. I believe the purpose of this provision is to determine the amount of permanently reinvested earnings eligible for repatriation in the case in which a company discloses in its applicable financial statements the incremental amount of U.S. tax that would be due on such permanently reinvested earnings if they were repatriated, rather than stating the actual amount of such earnings.

Mr. GRASSLEY. That seems to be an accurate interpretation.

Mr. SANTORUM. It would appear that the formula assumes that the incremental tax so disclosed would be at the full U.S. tax rate of 35 percent. Is it not correct that the amount of U.S. tax disclosed would instead be a lesser amount that takes into account the amount of foreign taxes already imposed with respect to such earnings?

Mr. GRASSLEY. As I read the statute, a 35 percent rate is assumed to apply only when a financial statement fails to show earnings permanently invested outside the U.S. but also includes an amount of tax liability attributable to such earnings. I believe that the formula is intended to produce an amount comparable to what would have been shown if the amount of earnings permanently invested offshore had been set forth on the financial statements. One shortcoming of the formula, which you have identified, is that the financial statements only take into account the incremental U.S. tax liability that would be incurred if the company repatriates its earnings, which would be the 35 percent rate reduced by any foreign tax credits. I think you raise a very good point that Congress should revisit in the future. In the meantime, I encourage the Department of Treasury to consider issuing guidance that permits taxpayers to more accurately reflect the actual amount of earnings permanently invested offshore.

Mr. SANTORUM. I thank the Senator for his insights.

DISTRIBUTION OF FILMS

Mr. BAUCUS. Mr. President, I would like to ask the chairman of the Committee on Finance an additional question regarding the American Jobs Creation Act of 2004.

Mr. GRASSLEY. Mr. President, I would be glad to take a question from the ranking member of the Finance Committee.

Mr. BAUCUS. I want to confirm that footnote 30 of the statement of conferees, relating to the methods and means of distribution of films, should not be read to create a negative inference with respect to the means of distribution of any other qualifying production property.

Mr. GRASSLEY. That is correct. No negative inference was intended.

Mr. BAUCUS. I thank the chairman.

CIVIL RIGHTS TAX RELIEF

Mr. BAUCUS. Mr. President, I congratulate Chairman GRASSLEY for assuring that the conference committee included Section 703, civil rights tax relief, in the conference report. As a member of the conference committee, I was very pleased to support this very important provision, which enjoyed strong bipartisan support among Senate and House colleagues.

As I understand it, the case law with respect to the tax treatment of attorney's fees paid by those that receive settlements or judgments in connection with a claim of unlawful discrimination, a False Claims Act, ''Qui Tam,'' proceeding or similar actions is unclear and that its application was questionable as interpreted by the IRS. Further, it was never the intent of Congress that the attorneys' fees portions of such recoveries should be included in taxable income whether for regular income or alternative minimum tax purposes.

Is it the understanding of the chairman that it was the conferees' intention for Section 703 to clarify the proper interpretation of the prior law, and any settlements prior to the date of enactment should be treated in a manner consistent with such intent?

Mr. GRASSLEY. The Senator is correct. The conferees are acting to make it clear that attorneys' fees and costs in these cases are not taxable income, especially where the plaintiff, or in the case of a Qui Tam proceeding, the relator, never actually receives the portion of the award paid to the attorneys. Despite differing opinions by certain jurisdictions and the IRS, it is my opinion that this is the correct interpretation of the law prior to enactment of Section 703 as it will be going forward. In adopting this provision, Congress is codifying the fair and equitable policy that the tax treatment of settlements or awards made after or prior to the effective date of this provision should be the same. The courts and IRS should not treat attorneys' fees and other costs as taxable income.

As I stated in my May 12, 2004 press release summarizing this and other provisions passed by the Senate as part of S. 1637.

Tax relief gets the headlines, but part of tax relief is tax fairness. It's clearly a fairness issue to make sure people don't have to pay income taxes on income that was never theirs in the first place. That's common sense.

Section 703 will help in well known cases, such as that of Cynthia Spina, an Illinois police officer that secured a settlement in a sexual discrimination case that left her owing $10,000 or more. There are literally dozens of others like her in similar situations and it is my strong belief that the courts and the IRS should apply the guidelines of Section 703 not only after the date of enactment but also to settlements put in place prior to that time.

Mr. BAUCUS. I thank Senator GRASSLEY.

The PRESIDING OFFICER. Who yields time?

The Senator from Montana.

Mr. BAUCUS. I yield myself time that is allotted under the rule. I appreciate if the Chair would advise me when I have 5 minutes remaining.

The British historian Thomas Carlyle said all work is noble. And Psalm 97, attributed to Moses, the psalmist's prayer says: Establish the work of our hands.

We all know the value and the meaning of work. It is so fundamental. Hard work counts. It helps us do what we need to get done. It also is good for the soul.

I am privileged in my State of Montana to have what I call workdays. I work at different jobs in Montana, show up early in the morning with a sack lunch, work all through the day. I don't want to watch, don't want to be told, shown what is going on. I would rather just do the work. It is wonderful. I got the idea from BOB GRAHAM of Florida. BOB has done this for countless years, and I can tell the Presiding Officer it is one of the privileges of the job I have. I know other Senators do the same. I would suspect the Presiding Officer has done that himself. He knows what I am saying.

I can remember sitting on this very cold day outside of Butte, MT with a pipefitter trying to cut pipes and fit joints together. And I don't know how he did it, but he did it. I helped him. I probably caused more problems and mistakes that he had to correct. It meant so much to me to watch this pipefitter who so appreciated the value of his job and doing a good job. He wanted to do a super job, and he did. He worked hard to get it done.

Another job I remember is in a mine outside of Columbus, MN, a platinum and palladium mine. You go up in the shafts. I was working a jack drill to try to drill holes into which charges are placed. I was totally fouled up. I couldn't do it. This guy was so skilled. He was creative. I mean he was a craftsman, setting that drill bit at the right spot, drilling those holes so the charges could be set. Or working in a hospital with a nurse, watching her so completely conscientious, wanting to do a great job in making sure her patients felt good and tending to her patients.

This bill is about work.

That is what this is. I am sure at one level it is about complying with the WTO ruling to assure that the United States is in compliance and the United States is no longer assessed these fees. As one Senator said, it could go up to 17 percent, which is a huge burden on our companies.

So the bill before us is about work, it is about how we help more Americans do the work they want to do, how they and their companies can manufacture more products that are somewhat difficult to manufacture because of the onerous fees we are paying on your export-manufactured products, particularly to Europe.

On another level, this bill is about straightening out our Tax Code. There are a lot of problems with the Tax Code and loopholes. They are huge, massive. This legislation, to pay for the replacement provisions—that is, the manufacturing deduction that will allow companies to manufacture more—are paid for with essentially loophole closers, corporate loophole closers.

Some say this is a big corporate giveaway. That is just not accurate for two fundamental reasons. No. 1, there are many billions of dollars in loophole closers, tax shelters, for example, where a corporation has to list very dubious transactions so the IRS can look at them closely to see whether they are accurate. Several other post-Enron corporate abuse shelters that are closed down are also in this bill. It is many billions of dollars.

Second, there are provisions in the bill which help our international companies and are designed to achieve one purpose: avoid double taxation. The international tax provisions are extremely complicated, very complicated. Unfortunately, American companies often are taxed twice. They are taxed by the foreign country in which they are doing business and also, as they properly should be, by the U.S. Government.

We have a system, generally, where an international company is operating overseas but headquartered in the U.S., and it could generally take the taxes that are paid in another country and use that to offset taxes it pays in the U.S. to avoid double taxation. That is, the American company is taxed on its worldwide operations but doesn't have to pay twice, a second time, to that other country. There are many cases in the Tax Code where that doesn't work very well and, in effect, the corporation is taxed twice.

So these provisions that some people are complaining about are essentially designed to prevent double taxation. There may be provisions that Senators might argue with on the margin and split hairs, but, in the main, these provisions are designed to avoid double taxation.

Also, this bill is revenue neutral. Unfortunately, our country has accumulated massive Federal deficits—$415 billion for this year. This is a big bill. It is very large. It is large because it appeals to this regime which the WTO organization says is illegal. It is large because it replaces it with a structure which, as I mentioned, is a deduction for manufacturing done in the United States to help spur more manufacturing, and that is massive; it is massive because it closes corporate loopholes.

But in the end, when you add it all up, it is revenue neutral. It doesn't add one cent to the Federal deficit. It is a responsible bill. It accomplishes the objective of complying with the WTO, and it also closes a lot of loopholes. It is massive. Also, it is fair because it avoids corporations being double taxed.

This bill is not perfect. We all say many times around here that we should not let perfection be the enemy of the good. It is a platitude, it is commonplace, and we say it all the time. I often remind myself that sometimes the most trite things are the most true. That we should not let the perfection be the enemy of the good is a principle that we should apply here. We are 100 Senators, 435 House Members, and the President, and we cannot each have our own way. We have to work together and add up the pluses and minuses, and each Senator has to decide whether the pluses outweigh the minuses. In my judgment, it is very clear that the pluses here very much outweigh the minuses.

The FDA tobacco regulation is not in the bill. I wish it were. There was a general agreement. I was not part of it, but there was a general agreement with those who worked with the companies and the farmers on a design where there would be a buyout. That is my understanding of the general understanding. Unfortunately, the House was resistant. They didn't want to put the FDA regulation in the bill. The question is, Should we kill this bill because that is not in here? That is a tough choice for many Senators, as it is for me.

After all is considered, it is my judgment there is so much else that is good in the bill that it should pass. Unfortunately, we have to take up FDA regulation another day. I hope we do because I believe tobacco is a drug and it will help reduce a lot of deaths in the United States if that is properly regulated.

I am also a bit distressed about the provisions for Montana that are not in here, particularly for Indian reservations. I have several ideas on how reservations could get a better break. That is also not in the legislation.

Let me say one more thing and I will close and save the remaining few minutes. I want to explain one major corporate abuse, which is closed, but not sufficiently closed in this bill. The abuse is where an American financial institution will enter into a long-term lease, like say with the country of France, to build a subway system in France, for example. Because of the long-term lease, the American financial institution treats that as if it owns it and is able to take deductions against the lease purchase.

Now, those are deductions that the financial institution can take against earned income. It lowers the income of that company. The net result of that is this: In the end, the American company takes huge deductions. The foreign government, in this case France, would own the system in the end, but the American taxpayers essentially are paying for that subway system, not the French. In fact, there is a small fee paid by the French for the privilege of allowing the American financial institution to take the tax deduction. Americans are essentially subsidizing that subway system and that fattens up the wallet of the U.S. company and

the shareholders. Again, it is an extension of noncorporate shareholders as American taxpayers who are not shareholders of that company. It is an absolute outrage.

This legislation stops that from this day forward, but it does not stop it for ongoing, currently operating transactions. So, unfortunately, America will still be subsidizing this. There are many of these instances overseas and in America, but I am most concerned about overseas, where there are municipal construction projects—subways, streets, you name it. I think that is wrong. I wish closing that down were in the bill. I will reserve the remainder of my time.

The PRESIDING OFFICER. The Senator from Iowa is recognized.

Mr. GRASSLEY. Mr. President, first, this bill passes an ultimate test that any bill has to pass that is of consequence.

This bill passes one of the strictest tests that something must pass in the Senate in order to get something done, and that is, it is bipartisan. It is bipartisan because of the leadership of Senator BAUCUS, and I thank him.

We have been hearing quite a bit about this legislation. Most of the complaints have been about what is not in the bill. I would like to have those who are complaining to focus on what is in the bill. Everyone needs to know that a vote against cloture is a vote against the items in this bill. This is a recorded vote, for which we will all be held accountable. The conference is closed. The House has voted overwhelmingly for this bill. If this bill does not get cloture, it is a dead bill.

Vote to end the Euro sanctions against U.S. exporters. They are now 12 percent. They will be 17 percent by March. Those sanctions hit farm products, timber, paper, citrus, and manufacturing. There are people being laid off because of these sanctions against our exports. A vote against cloture is a vote to continue the sanctions.

Farms and businesses shoulder this burden because Congress has failed so far to act. The manufacturing tax cut to create jobs in America that is in this bill goes to large and small corporations, family-held S corporations, partnerships, sole proprietorships, farmers, and co-ops. This $76 billion portion of this bill is only for manufacturing in the United States. It is not creating jobs offshore because it does not benefit manufacturing offshore.

Are you going to vote against giving individuals a deduction for the State sales tax against their Federal income tax that is in this bill? This bill is the most comprehensive agricultural, small business, and rural community incentive tax package ever. A vote against cloture is a vote against benefits in this bill that will help value-added agriculture.

The bill contains VEETC; 37 of our 50 States will receive more highway money because of the provisions in this bill. VEETC and this bill's provisions that shut down fuel tax fraud will put over $24 billion into the highway trust fund alone. This provision alone will create 674,000 new jobs across the country. A vote against cloture is a vote against highway money for your State.

A vote against cloture is a vote against highway jobs for construction of highways in your State. The energy package in the bill includes new incentives for biodiesel. This provision means jobs in our heartland, over 150,000 new jobs.

The bill accelerates production of natural gas from Alaska and the construction of a pipeline to carry it to the lower 48 States. This will create nearly 400,000 jobs in construction, trucking, manufacturing, and other sectors.

This bill devotes over $2 billion to section 45, renewable electricity production credit. This was a high priority for Senators BINGAMAN, SMITH, DASCHLE, HATCH, BAUCUS, SNOWE, BREAUX, LINCOLN, CONRAD, BUNNING, and GREGG.

The small business package in this bill extends small business expensing for another 2 years, and contains significant S corporation reforms. S corporation reform has always been a high priority in the Senate because it helps family-owned businesses.

A provision in this bill expands the new markets tax credit to help economic development in rural counties.

We have included also the Civil Rights Tax Fairness Act. We included a National Health Service Corps loan program to enhance the delivery of medical services to rural areas.

The bill provides all these benefits, nearly $140 billion worth, and this is a revenue-neutral bill, which means this bill does not add one dime to the Federal deficit.

It is all paid for by shutting down corporate expatriation to Bermuda, tax shelter leasing abuses by corporations, and ends all the Enron-type tax shelter deals. This is the most tough antitax shelter measure since 1986.

This bill contains some of the most important international tax reforms in decades, bringing foreign earnings home for investment in the United States instead of investing overseas, hence creating jobs in the United States.

We have heard complaints from Senator LANDRIEU because the bill does not contain her reservist amendment. I would like to make it clear that Senator BAUCUS and I offered that amendment on her behalf. We came up with a way to pay for that. All Senate conferees, Republican and Democrat, voted for it. The conference was open to the public. There were no backroom deals. The House, the other body, rejected it.

Voting down this bill will not bring back the reservist amendment. The conference is closed.

There is a great deal of good in this bill. We can rescue the manufacturing sector; we can end European Union sanctions on our farmers; we can respond to the recent rise of gas prices by supporting renewable fuels, and we can shut down every known tax abuse. Vote to finish the job. Vote for cloture. It is time to pass this very important bill.

I yield the floor.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BAUCUS. Mr. President, I yield the remainder of our time.

CLOTURE MOTION

The PRESIDING OFFICER. All time is yielded back. Under the previous order, pursuant to rule XXII, the Chair lays before the Senate the pending cloture motion, which the clerk will report.

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on the conference report to accompany H.R. 4520, a bill to amend the Internal Revenue Code of 1986 to remove impediments in such Code and make our manufacturing, service, and high-technology businesses and workers more competitive and productive both at home and abroad.

BILL FRIST, CHUCK GRASSLEY, TED STEVENS, KAY BAILEY HUTCHISON, CONRAD BURNS, THAD COCHRAN, NORM COLEMAN, GEORGE ALLEN, LARRY CRAIG, TRENT LOTT, MITCH MCCONNELL, JON KYL, CRAIG THOMAS, JOHN CORNYN, BEN NIGHTHORSE CAMPBELL, ELIZABETH DOLE, JOHN TALENT.

The PRESIDING OFFICER. By unanimous consent the mandatory quorum call has been waived. The question is, Is it the sense of the Senate that debate on H.R. 4520, the American JOBS Creation Act of 2004, shall be brought to a close?

The yeas and nays are mandatory under the rule.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. MCCONNELL. I announce that the Senator from Colorado (Mr. CAMPBELL), the Senator from Georgia (Mr. CHAMBLISS), the Senator from Texas (Mr. CORNYN), the Senator from New Hampshire (Mr. GREGG), the Senator from Texas (Mrs. HUTCHISON), the Senator from Pennsylvania, (Mr. SPECTER) and the Senator from New Hampshire (Mr. SUNUNU) are necessary absent.

I further announce that if present and voting the Senator from Texas (Mr. CORNYN) would vote ''aye.''

Mr. REID. I announce that the Senator from Indiana (Mr. BAYH), the Senator from Delaware (Mr. BIDEN), the Senator from California, (Mrs. BOXER), the Senator from New York (Mrs. CLINTON), the Senator from New Jersey (Mr. CORZINE), the Senator from Illinois (Mr. DURBIN), the Senator from North Carolina (Mr. EDWARDS), the Senator from South Carolina (Mr. HOLLINGS), the Senator from Massachusetts (Mr. KERRY), the Senator from New Jersey (Mr. LAUTENBERG), the Senator from Vermont (Mr. LEAHY), and the Senator from Maryland (Mr. SARBANES) are necessarily absent.

The PRESIDING OFFICER (Mr. ALEXANDER). Are there any other Senators in the Chamber who desire to vote?

The yeas and nays resulted—yeas 66, nays 14, as follows:

[Rollcall Vote No. 210 Leg.]

YEAS—66

Alexander	Ensign	Murkowski
Allard	Enzi	Murray
Allen	Feingold	Nelson (FL)
Baucus	Feinstein	Nelson (NE)
Bennett	Fitzgerald	Nickles
Bingaman	Frist	Pryor
Bond	Graham (SC)	Reid
Breaux	Grassley	Roberts
Brownback	Hagel	Rockefeller
Bunning	Hatch	Santorum
Burns	Inhofe	Schumer
Cantwell	Inouye	Sessions
Cochran	Jeffords	Shelby
Coleman	Johnson	Smith
Collins	Kyl	Snowe
Craig	Lieberman	Stabenow
Crapo	Lincoln	Stevens
Daschle	Lott	Talent
Dayton	Lugar	Thomas
Dole	McConnell	Voinovich
Domenici	Mikulski	Warner
Dorgan	Miller	Wyden

NAYS—14

Akaka	DeWine	Landrieu
Byrd	Dodd	Levin
Carper	Graham (FL)	McCain
Chafee	Harkin	Reed
Conrad	Kennedy	

ANSWERED ''PRESENT''—1

Kohl

NOT VOTING—19

Bayh	Corzine	Lautenberg
Biden	Durbin	Leahy
Boxer	Edwards	Sarbanes
Campbell	Gregg	Specter
Chambliss	Hollings	Sununu
Clinton	Hutchison	
Cornyn	Kerry	

The PRESIDING OFFICER. On this vote, the yeas are 66, the nays are 14, and 1 Senator responded present. Three-fifths of the Senators duly chosen and sworn having voted in the affirmative, the motion is agreed to.

Under the previous order, the Senator from Louisiana is recognized for up to 1 hour.

Ms. LANDRIEU. Thank you, Mr. President. May I have order, please?

The PRESIDING OFFICER. The Senate will be in order.

The Senator from Louisiana.

Ms. LANDRIEU. Thank you, Mr. President. I am not going to speak until we have more order.

The PRESIDING OFFICER. The Senate will be in order. Please take your conversations to the cloakroom.

The Senator from Louisiana.

Mr. DORGAN. Mr. President, the Senate is not in order. The Senator from Louisiana has an hour. She deserves to be heard. The Senate is clearly not in order.

The PRESIDING OFFICER. The Senate will be in order.

Mr. STEVENS. Mr. President, will the Senator yield to me for the purpose of making a unanimous consent request?

Ms. LANDRIEU. I am sorry, Mr. President, no, I won't. Maybe in a few minutes but not at this point.

As my colleagues know, we have been working toward this point, actually on this particular bill, for over 2 years, so there have been many meetings, many votes, many debates, many conferences. I understand that. I know we are to the very end of this discussion, and we have a bill before us with $137 billion worth of tax cuts. This is a bill that started out 2 years ago because of a decision by the World Trade Organization that called to our attention that our Tax Code was not in order and that if we did not straighten some things out in our Tax Code, some of our businesses could be penalized. So 2 years ago, an effort was undertaken to correct that.

Some of us, knowing that effort was going to be undertaken, crafted a provision to give tax relief to the Guard and Reserve and their families, to the members of the Guard and Reserve who are on the front line, by saying to all the patriotic companies in America, large and small: As you continue to give that paycheck to the men and women on the front line, we thank you, we appreciate that effort. We know it is difficult for you. We know it is tough for you. And we want to provide a 50-percent tax credit to you to help your Guard and Reserve to keep their paychecks whole.

Because a lot of paychecks in America are going to get fattened, a lot of dividend checks are going to be improved, and a lot of benefits are in this bill, some of us thought, and the whole Senate voted, Democrats and Republicans, that one of the paychecks we should make sure was complete and whole was for the men and women taking the bullets on the front line.

Mr. President, 640,000 men and women have been called up since 9/11, and when we called them up, they have gone.

Mr. President, may I have order, please?

The PRESIDING OFFICER. The Senate will be in order.

The Senator from Louisiana.

Ms. LANDRIEU. Thank you, Mr. President. I know that tempers are short because it has been a difficult process, and I am trying to be as cooperative as I can. I do not mean any disrespect to anyone in this Chamber, and I do not mean any disrespect for the managers of this bill, who have done a magnificent job under very difficult circumstances, but I have, since Wednesday, been trying to make this point.

When this bill left the Senate, there was a provision that gave a tax credit to the men and women on the front line in Iraq and Afghanistan, wherever they serve, to keep their paychecks whole by giving a 50-percent tax credit to the thousands of employers, large companies and small companies, who send their civilian paychecks to the front line, not so much for the benefit of the soldiers. Many of these men and women who are fighting on the front line understand sacrifice. That is why they joined. If we understood sacrifice a little bit more in this Chamber—and I include myself. I don't understand the sacrifice, but I can tell you the men and women in uniform understand it. But this is not really all for them. It is for their families, their spouses and children, to keep that one paycheck whole.

For some reason, we passed a bill out of the House of Representatives, crafted in large measure by Chairman THOMAS, that left them out. They couldn't find $2 billion in $137 billion to put in for our troops.

We have ceiling fan importers in the bill. We have the gambling industry in the bill. We have the oil and gas industry in the bill. There are many industries in this bill that are important to me. But I have confidence—complete confidence—that not one business in Louisiana, not one industry in Louisiana thinks they deserve to be in line before the Guard and Reserve and the employers that are keeping their paychecks whole—not one. If there is a company in Louisiana, if there is a company anywhere that thinks the tax credit in this bill is more important than the paychecks going to the men and women on the front line, please contact me, because I don't understand it, and maybe it is something I have missed.

I want my colleagues to know that I am only going to speak for the first few minutes, and I have an hour reserved. I am going to speak throughout the 30 hours, use a little bit of my time as we go on.

It is really not that complicated. My colleagues understand this issue. I don't think I have to go into any more detail about the amendment, what it did, how much it cost, and the fact there were 100 percent of the Senators, Republicans and Democrats, who supported the issue. It was moved over to the House. I think they understand it was the House Republican leadership primarily that crafted this bill and evidently did not think it should be included.

Let me spend a few minutes about what I am going to do so we can be clear about the schedule. I do not take this move lightly. I understand we are at the end of the session. I understand people have commitments. I understand there are elections going on. I know there is a Presidential election going on and elections for many of our colleagues in the Senate. But I am going to use all the parliamentary procedures available to me as a Senator to fight for the 5,000 men and women in the State of Louisiana who are currently activated and have gone to the front lines and don't get a whole paycheck. They get their Army or their Navy or their Reserve paycheck, but they leave a lot of pay on the table because they don't get their civilian paycheck.

Here is a tax bill that could have allowed their employer to get a 50-percent tax break, thereby encouraging them to continue that paycheck.

I am going to stand here and fight for them. I can't extend this debate past Thursday. I don't think there is anything in my power to do that. But I can and intend to use all the parliamentary procedures available to me until the

end of this debate. If I have to stay on the floor for the next 4 days, I am prepared to do that. It is with the greatest amount of respect that I let my colleagues know this.

The solution is something I have offered to my colleagues which I want them to consider. I know this bill cannot be amended. I understand that. I am not asking for that. There is a bill, H.R. 1779, that is in the Finance Committee now. Amazingly, because I didn't have anything to do with this bill, I can't believe the bill addresses exactly the same subject that I am discussing. It is a House bill that came over here from the House from the Committee on Ways and Means, the same committee that cut them out of this bill. There is another bill that came over from the Ways and Means Committee that is in the Finance Committee now. So by unanimous consent of the Senate, without even a rollcall vote, just if all the Senators in this body would agree, we could amend this provision into that bill and simply send it back to the House.

I understand I am only one Senator. I know the Senate can do its will, and we can't force the House of Representatives, but we can go on record to say, this bill is important. We can amend the bill.

I would like to spend a moment just to say what the bill is because there is a little bit of irony about the underlying bill. There is an interesting irony about the underlying bill. I will tell you who the author is in a minute. But it is an interesting bill that came over here to give the Guard and Reserve a tax benefit. The tax benefit described in that bill is to waive the 10-percent penalty for the Guard and Reserve taking money out of their IRAs so, presumably, they could pay a house note or a car note. In other words, there is a bill that came over to us from the Committee on Ways and Means to give a tax benefit to Guard and Reserve members to allow them to waive the 10-percent penalty so they could take money out of their retirement account to make ends meet while they are taking the bullets for us.

I have to hear objection for our amendment supported by many Senators, Republicans and Democrats, that would actually keep their paychecks whole so they could put some money in their IRA. What do you put in your IRA if you don't have a paycheck to put in your IRA? If anybody can explain to me what goes in an IRA other than money from a paycheck, maybe if somebody is lucky to have a dividend check or some passive investments or some capital gains, but most people I know take their paychecks and out of their paychecks, after they have paid their rent, after they have paid their car note, after they pay health insurance for their family, after they pay their food bill, after they pay their insurance bill and everything else they have to pay for, if there is anything left, they put it in their IRA. Because most Americans I know try to do their very best to manage their money.

So I have to have the insult of having the House send us a bill saying they want to waive the 10-percent penalty for the Guard and Reserve, but they won't help put an amendment on to give them a full paycheck so they have money to put in it. This Senator finds that quite obnoxious.

The irony of it is unbelievable. I asked the staff, go find me any bill, any Finance Committee bill that wouldn't get blue-slipped. They came back and said: Senator, you will not believe it; it is a bill about the IRA.

Mr. NICKLES. Will the Senator yield?

Ms. LANDRIEU. No, I will not yield.

So we have this bill that is over here. All I have asked my colleagues is this. As the leader knows, I am not even asking for a record vote. Even though I think our guardsmen and reservists deserve a recorded vote, because I think we should go on record, but I am not even asking for that. I am asking for a voice vote—a voice vote, not a recorded vote—to take that IRA bill, put this amendment on it and simply send it back to the House. This filibuster will be over. That is all I am asking.

Let me say one other thing. I am not opposed to one item in this bill—not FDA, not the pork issue.

I have tried to be respectful of other Members. I would ask that same consideration.

I am not opposed to any provision in this bill. There is $137 billion in this bill. This bill was supposed to be about $50 billion. Of course, when you open a tax bill, everyone in America would like to be in it. They have done a good job because everybody is in here. The only people who are not in here are the men and women taking the bullets on the front line. Six hundred and forty-three thousand Americans on the front line, and we couldn't find one page, not one line, not one paragraph for them. This is disgraceful.

It is not our fault. The Senate did not do that. But somewhere between the Senate and the House, the papers got lost. I don't know why they get lost. I don't know why we can't remember them in the tax bill because we sure remember them in photographs. We sure remember them in the parades. We sure have them all over our ads for those running for office.

I am not up for reelection now. I will be up for reelection in 4 years, and I am certain I will hear from every industry in here about how I didn't help them with their tax credits. I will say it again. I am not opposed to any tax credit in this bill, not one. What I am objecting to is how we could, in the middle of the war, with no end in sight, no real plan for the peace, no understanding of when our troops might get home, no understanding of how long they are going to have to be there, we cannot keep the paychecks going to their families.

When is somebody going to tell me we don't have enough money? What is this? This issue is not complicated. This is very simple. That is why people are responding because it is not complicated. I am trying to explain to my colleagues that it is very simple. I am not even asking for a record vote. I didn't want people to stay here until Thursday. I have 2 children; one is 12 and one is 7. I have had to make arrangements for the next 4 days for them and for my husband. I understand that. I have canceled everything on my schedule. I am not looking for awards or sympathy. I am not asking for anything unreasonable. If these guys can go to the front lines and leave their families for a year or 2 years, can't I stand here for a few days? Can we not work for a few hours to try to voice vote, in the air-conditioning of this building, and send this bill back over to the House and mark it up as they just were not clear about what they were doing? They just didn't realize what they were doing? When they come back in November, they can fix it. That is all I am asking.

One more thing about the tax credit, and then others may have questions. Maybe I haven't been clear. Here is the list of the tax credits. The only arguments I have heard against what I am trying to do are two. One was given by one of the House Ways and Means Committee members when I called to let them know ahead of time I was going to do this. I tried not to surprise anyone. I called them as soon as this bill was printed and came here Wednesday. I called members of the Ways and Means Committee and asked them: What could have possibly happened?

The only comment they gave back that was reported in the newspaper was the House did not like our offset. Forgive me, I am not a member of the Finance Committee. I don't know all of the details about offsets. I don't think our Guard and Reserve know about offsets. I don't think the people we represent know about offsets. But I will tell you, somebody in this Chamber knows about offsets because there is $137 billion worth of offsets right here. Did anybody think we could find $2 billion for them? So I am sorry I am not an expert in offsets.

The only other argument I have heard from anybody—maybe there are others and I haven't heard them, and I have been here 3 days—is I don't think we should have tax credits in this bill. Somebody might object philosophically to tax credits. That surprises me because, from the day I got to the Senate, all I have heard from the Republican leadership is tax credits, tax cuts, tax relief. If they don't say it a thousand times every day, it is amazing. Just tax credits, tax relief for everybody, whether we have money in the Treasury or not. That is all I hear about. So it is amazing to me that someone could say we don't like it because, technically, it is a tax credit.

Let me read the nine tax credits that are in the bill. I want the Guard and Reserve to listen; they got left out. I

will tell you the ones in this bill. Section 221: There is a modification of targeted areas of low-income communities for new market tax credits. That is probably very good. It is for new markets. I am sure it will help everybody in low-income areas. I think that is great.

Section 245, credit for maintenance of railroad tracks: It establishes a business tax credit equal to 50 percent—Mr. President, I am losing my voice having to speak over the conversations.

Mr. NICKLES. Will the Senator yield for a question?

Ms. LANDRIEU. No, I will not.

The PRESIDING OFFICER. The Senate will be in order.

Ms. LANDRIEU. Section 245, a credit for maintenance of railroad tracks, establishes a business tax credit equal to 50 percent of qualified expenditures for railroad track maintenance, capped at $3,500 per mile. Maybe there is a staffer or somebody who can calculate how many miles of railroad tracks we have and multiply it by 3,500 because that is a tax credit that is in this bill. We may need to do that. I have tons of railroads running through Louisiana, but not one railroad company in this country thinks their tax credit should come before making the paychecks of the Guard and Reserve whole.

Biodiesel income tax credit: Provides a 50-cent-a-gallon income tax credit similar to the present law ethanol benefits for each gallon of biodiesel used in the production of a qualified biodiesel mixture used or sold as fuel. I am fine with that, but you would think the tax credit some of us had and thought was important, which gave them a paycheck so they could buy gas, is equally important to this.

Section 339, credit for production of low sulfur diesel fuel; section 341, oil and gas for marginal wells—I know in Oklahoma they have a lot of marginal wells. I have some in Louisiana myself. I am very aware, as a member of the Energy Committee, of the importance of this tax credit, but again, not before the men and women taking 100 percent of the bullets.

Expansion of credits for electricity produced from certain renewable sources and then certain business credits allowed against regular minimum tax.

This is what I was given this morning. Perhaps there are more. I know these are nine tax credits in the bill. The rest of this bill has to be something else that they don't call tax credits. But it is tax benefits. I am not sure I know the title of it. Maybe I am not exactly correct. But these are the tax credits, which is the same thing I asked to be in this bill, and many of us asked, and it was left out by the House Republican leadership.

So, again, I am prepared to stay here until Thursday. I am not going anywhere. I am only asking for a voice vote—not a rollcall vote—on a bill that is already over here, that is already in our Finance Committee, to put this amendment on and send it back to the House. Then we can all go home and talk about it and we can say we supported it, which we did, and we did a great job, and then people can talk to House Members about are they going to accept this bill or amend this bill or kill this bill. Let the House Members answer that question.

All we can do here is take care of the Senate's business. This is the Senate's business, Mr. President. If we don't stand up for these guys and gals, if we don't fight for their families, who is going to fight for them?

Let me ask the Chair how much time I have remaining?

The PRESIDING OFFICER. The Senator has 38 minutes.

Ms. LANDRIEU. Mr. President, I think the Senator from Florida might have a question.

The PRESIDING OFFICER. The Senator from Florida is recognized.

Mr. NELSON of Florida. Mr. President, as I direct my comments to the Senator from Louisiana, this is one of the most impassioned personal statements that I have heard on the floor of the Senate, and I suggest that our colleagues take heed. The Guard and Reserve have had to carry the burden in Iraq. That is one of the main points of discussion in this Presidential race. It has been one of the main points of discussion in our Senate Armed Services Committee, headed by the esteemed chairman, who is on the floor.

Do we have enough active duty? We have concluded that we do not have enough active duty, and we have seen that the Guard and Reserve are being asked over and over again, on several rotations, to take up the slack because of the needs.

It was called by Senator KERRY the other night in Missouri a backdoor draft. So I ask the Senator, does this——

The PRESIDING OFFICER. The Senator only yielded for a question.

Ms. LANDRIEU. He is asking a question.

Mr. NELSON of Florida. I am sorry?

The PRESIDING OFFICER. The Senator may only yield for a question.

Mr. NELSON of Florida. Mr. President, did I not just ask a question right then? Would the Parliamentarian please advise if I was not asking a question right at the moment?

The PRESIDING OFFICER. The Senator did ask a question.

Mr. NELSON of Florida. I thank the Chair.

Would the Senator please point out if she thinks that this is important to the Guard and the Reserve given the fact that so much of the load has been put on our National Guard and our Reserve?

Ms. LANDRIEU. I thank the Senator from Florida for his comments, and I would be happy to answer his question because he is exactly correct. All members of this Chamber are aware that since 9/11, 640,000 guardsmen and reservists have been called up from Florida—and I see the Senator from Arkansas—from her State, other Senators who are here this morning and will be here through the debate—from all of our States. The Senator is absolutely right. The large measure of the burden has been placed on them and their families. The Senator from Florida knows they do not ask for much. These guys and gals are used to sacrifice. They do not ask for much and they really do not like to complain. They are the last ones to stand in line and come ask to be included in this bill, but we should ask on their behalf. That is why this amendment is so important.

If we were not passing a tax cut bill and we did not have any money to give anybody credits or tax cuts, then they would be the first to say: Please do not include us. But how can we, in good faith, stand here and pass a $137 billion bill and leave them out and leave out their employers, small businesses from Florida, Arkansas, and Louisiana that are digging deep, sending that paycheck to the front line even though the man or woman is not in the office or in the manufacturing plant, trying to help their families? Surely we could have found some room in this budget for them.

I thank the Senator for the question.

Mr. NELSON of Florida. Will the Senator yield for another question?

Ms. LANDRIEU. Yes, I would.

The PRESIDING OFFICER. The Senator from Florida.

Mr. NELSON of Florida. Would the Senator from Louisiana recall for us if she has had a similar experience in her State as this Senator has from my State of Florida in talking with members of the families of the National Guard who are at an enormous financial sacrifice when they have to leave their civilian job and are activated, especially if it is two or three rotations they have to go to, and if their employer—I am curious if the Senator has heard from the employers in her State of Louisiana, as I have in my State of Florida, if her employers who want to help the Guard men and women and who want to help the reservists and want to pay them, why they should not receive some financial incentive through a tax break? Would the Senator recall for us her experience, and is it similar to the experience I have had talking to employers and reservists and Guard men and women?

Ms. LANDRIEU. The Senator from Florida raises a very good question to me, and the way I would like to answer that question is with an e-mail. It is wonderful that I received this e-mail this morning. I have received hundreds of e-mails from families all over the United States who have been keeping up with this issue, but because this answers the Senator's question—this is from Bossier City, LA, and he writes: First, I would like to give you a little background on myself. I was raised as a military brat. My father served in the Air Force for 28 years, and we were stationed at Barksdale Air Force base

three times. He and my mother retired in Bossier City. We had a good life growing up in the military, and in my opinion it brought us closer together as a family, but there were many, many, many times when things were tough financially for a family of five. I watched you today on C–SPAN, and I was proud that you have represented us and our State and our military families. I think it is extremely important for funding to compensate our military families, especially now when there are no clear answers on how long our troops will be required to be in Afghanistan and Iraq. I have many friends whose spouses have lost significant amounts of income due to activism. Not only do they worry about their spouses on the front lines, they have to worry about how to make ends meet here in the States. Please keep fighting for their cause. By the way, this should not be a Republican versus Democratic issue. My parents are conservatives and I am a liberal, but we consider this matter a matter of patriotism.

I say to the Senator from Florida and other Senators, I have received hundreds of e-mails just like this, and so I want to make one more point. I do not think this is a Democrat versus Republican issue. As I said, the amendment we are fighting for already passed the Senate by 100 votes. The Senator was a cosponsor. The Senator from Arkansas was a cosponsor. I see other Senators in the Chamber who were cosponsors. We wanted this amendment in the bill, and it was in the bill. It went over to the House, and in the negotiations it was dropped. My question is, why? How could we afford to give a tax credit to everybody else but not the Guard and Reserve?

I thank the Senator for his question. I will yield for another question in a minute but to the point in answering the question: This is a page out of the handbook that the Guard and Reserve receive from our Government. This is the handbook they receive, ''Family Readiness Paradigm.'' The center of this says ''self-reliant families.'' ''Self-reliance'' is a powerful word. I like to think I am self-reliant. I like to encourage my children to be self-reliant, self-sufficient, independent, hard working. So we send out a memo just to sort of reinforce to our Guard and Reserve that we expect them to be self-reliant. We provide reunions for them. We help them with their deployment, tell them what is going to happen. We try to help them set up health care plans. We arrange telephone calls. We do the training and mission. The only thing we do not do is send a paycheck.

Then we have the President saying:

The National Guard and Reserves are a vital part of America's national defense.

[They] display values that are central to our Nation: character, courage and sacrifice, [and demonstrate] the highest form of citizenship.

And while you may not be full-time soldiers, you are full-time patriots.

Evidently, they do not deserve a full paycheck?

Mr. NICKLES. Will the Senator yield for a question?

Ms. LANDRIEU. No, I will not yield. I am sorry.

That is what the argument is about. Again, I am not asking for a rollcall vote. I know this bill cannot be amended. It is against the rules. There is nothing I can do to amend it. But the bill that is right now before the Senate, I am asking our leadership—I am asking my colleagues to please join with me; I know many do, but I need everybody, I need 100 percent—to agree to amend this bill and send it back to the House and give the House time to reconsider this position. I am fairly certain they did not know the specifics of it. I am going to give them the benefit of the doubt. I do not know that they specifically looked at this and said: These people do not deserve it. I do not think that happened. All I know that happened is that it came back without it in it, and we have time to fix it. We cannot fix it today, we cannot fix it tomorrow, but if we send a bill back to the House, whenever the House comes back, in October, November, December, or January, they could fix it.

How much time do I have remaining?

The PRESIDING OFFICER. The Senator has 28 minutes remaining.

Mr. NICKLES. Will the Senator yield for a question?

Ms. LANDRIEU. I will yield to the Senator from Florida and then perhaps to the Senator from Oklahoma at a later time.

The PRESIDING OFFICER. The Senator from Florida.

Mr. NELSON of Florida. Mr. President, I ask the Senator from Louisiana if her experience in Louisiana, in talking to the Guard people as well as the reservists, that often she finds, as I have found in Florida, that many of them, their employers, the fact that they are first responders, that they are local law enforcement or they are firefighters or they are EMS personnel— if she has found that, as we have seen today on the front page of the Washington Post, that a lance corporal in the Marine Corps went into the Marines because he wanted to get revenge after 9/11? He was a firefighter in New York, and that is the patriotism, as it has been expressed by so many of these first responders. Would the Senator, if she has had that similar experience as I have had in Florida, would she explain that her provision also involves a tax credit for the employers of first responders?

Ms. LANDRIEU. I thank the Senator and will respond to his question by saying: Yes, in this amendment, besides what I have described, there is a portion of the amendment—that was actually led by Senator BOXER—that would allow this tax credit to be applied by local governments to try to keep the paychecks whole for firefighters and police officers who have gone to the front line.

Think of the irony. The Senator from Florida understands this issue well. In the case he described, a firefighter who fought the fire in New York on 9/11, maybe one who went up into the building, put his life on the line or her life on the line on that day—and we know what happened. We don't have to go back and replay that memory in our head. Then he is in the Guard or Reserve and he signs up to go to Iraq to fight, to take the bullets. Because we left this amendment out, he has to send his family back half a paycheck, and we can't find the money in this bill, $137 billion, to help them keep that paycheck whole? It is a disgrace. It is shameful. It is unjust. It is unconscionable. That is why I am going to stay here until Thursday. I understand it may not work. I understand the session may adjourn. But it is going to adjourn with me speaking about this, and I hope all of us, saying the Senate has already spoken on this. Our leadership, Republican and Democratic, said if we are going to have a tax bill, a tax cut, a tax break, the Guard and Reserve should be a part of it.

If we could find other things to help, I am happy to do that as well. I put this particular thing together with some of us. There are many other items I am sure could be put in a comprehensive package. In fact, I have spoken to many of the colleagues who have said to me: Senator, we could put together a more comprehensive package. I am working on that with them as well. However, there is no reason and no excuse and nothing anyone can say to me to convince me that before we adjourn we should not take the action, with not a rollcall vote but a unanimous consent, and at least send this bill back to the House. Then we will have all the time in the world—October, November, December, all next year. I am going to be here at least 4 more years unless I get recalled. My election is not up for 4 more years. I will work on it with anybody who wants to for the next 4 years and come up with a comprehensive package. I know that.

But I want the Senator from Florida and the Senator from Mississippi to know, we don't have to wait for a comprehensive package. We don't have to have it all neat and pretty. We don't have to have a commission that could decide let's do this and let's do this. This is what is before me right now. This is what is before me—$137 billion of tax cuts, and not one page, not one paragraph, not one tittle, not one scribble for the Guard and Reserve.

Mr. NICKLES. Will the Senator yield?

Ms. LANDRIEU. No, I will not.

So that is my issue at this moment. I am hoping to put a package together. I don't expect this bill to be amended. But I have asked the leadership to allow a unanimous vote—not even on the record—to put this Paycheck Protection Act on the IRA.

How do you have an IRA without money to put in it? I don't know. So it makes sense to put my paycheck bill

with the IRA bill, so then they could actually have an IRA to take the 10-percent credit if they had money in it. You can't get the 10-percent credit unless you have money in your IRA, so this matches pretty perfectly. You get the paycheck, put the money in your IRA, take the IRA out, and you don't have to pay your 10-percent penalty. That would be terrific.

Then on that bill, also an amendment, there is a possibility there could be some hurricane relief. But I want to be clear about one thing. I didn't ask for that although my State will benefit from it. The Senators from Florida, Senator GRAHAM and Senator NELSON, rightly led that. I am a cosponsor of that. That would fit nicely on that amendment. We have to give help to the hurricane victims as well. So we have the Paycheck Protection Act. We have the hurricane help.

Right now, as I speak, I have flooding in my State. I woke up this morning and turned on the television and, besides seeing Donald Rumsfeld in Afghanistan, the next I saw was a levee break in Louisiana. So there is money in this tax bill that I am talking about to help Florida, Mississippi, Alabama, and everybody who is flooding, help this paycheck protection, and do this IRA provision which, again, was not my idea but I support it. I think it was a good one.

All I need is for 100 Senators to say it is OK. Evidently I don't have 100 Senators. I might have 98, 99, 89. We don't have a rollcall so I don't know. All I know is I don't have 100, because if I had 100 this filibuster would be over. So that is where we are.

Mr. NICKLES. Will the Senator yield for a question?

Ms. LANDRIEU. I will yield to the Senator from Florida and then the Senator from Oklahoma, after one more question from the Senator from Florida.

The PRESIDING OFFICER. The Senator from Florida.

Mr. NELSON of Florida. I think the Senate, in my question to the Senator from Louisiana, better take note of the passion and the intensity of the Senator from Louisiana.

I would ask the Senator from Louisiana, Why is it that certain members of the leadership on the other side of the aisle are blocking your attempt to help the National Guard and Reserves on a House bill that has already been sent here from the Ways and Means Committee, that is a very logical, underlying piece of legislation because it gives a tax break by allowing people to take money out of their IRA to help them with their expenses as a member of the Guard and Reserves, with paying the 10-percent penalty?

Why in the world would somebody be blocking the Senator doing that? There is no guarantee it is going to pass when it gets down to the other end of this Capitol. So at the end of the day they might still kill it. Why in the world would they be blocking such a logical thing, to help out the National Guard and the Reserves?

Ms. LANDRIEU. Thank you. That is actually the question of the day. It may take all day or tomorrow to get the answer to that, but I don't know the answer to that. Maybe some Senator could give us the answer to that. I do not know why, but that is what this debate is about.

Is there any compelling reason we could not do that, end this filibuster, move on? These bills are very important to do. I am not objecting to anything in this bill. I am not objecting to anything in the military construction bill. I am not objecting to anything in the intelligence reorganization bill. Surely there are things in here I don't particularly like, but that is the process. That is the process. I cannot write this bill perfectly. There are things in here my constituents would find absolutely laughable. But I have to tell them we have to laugh sometimes, that is the way it is. That is the process. I have been a legislator for 25 years. I know the process. But this is more than process. This transcends all issues, in my mind. This is about whether this Senate, Republican and Democratic leaders, will stand up for the men and women on the front line—yes or no.

It is as simple as that.

Mr. NICKLES. Mr. President, will the Senator yield for a question?

Ms. LANDRIEU. Yes.

Mr. NICKLES. I need to know a little bit more about the amendment. The tax credit goes to the employers. Is there any guarantee that money, the tax credit—let's say $20,000 for the service man or woman—goes to the service man or woman. How do we know that happens? Is there a delay before they would benefit from those dollars?

Ms. LANDRIEU. I would like to respond this way. I have the greatest respect for the Senator from Oklahoma. I actually like him very much. He and I have worked on some important issues—the issue of child welfare, adoption, foster care. I respect him as a Member who understands the details of the finance and tax system and the Budget Committee. He chairs the Budget Committee.

All I can say in answer to that is we drafted the amendment as carefully as we could to make sure that, in fact, that happens. I assure him that there are people wiser than myself, smarter than myself, who have worked here either as a Member or a staffer who could carefully craft such an amendment. I know they crafted this whole entire bill of 600 pages to help the railroads maintain their tracks, for ceiling fan importers so they can keep the fans on, but the troops in Iraq can't afford a fan. Their families can't buy one.

The Senator can talk about whatever. I am respectful of his question. I am completely convinced that the amendment could be written in such a way.

Does the Senator have any other questions?

Mr. NICKLES. I am not sure it is written that way. I am not sure it is a requirement that an employer has to give the money immediately to a service man or woman. I suspect that is your intent. I don't believe that is the way the amendment is written. I would like to know more about it.

I have a different question. If the amendment were agreed to, you would be paying substantially more for a man or woman serving side by side—let us say in Iraq or Afghanistan in combat a situation, the Federal Government would be paying significantly more for that reservist than they are for the Active-duty. How much differential should we pay? Is that equitable for the thousands of people who are Active-Duty to be paid less than the Reserves when their lives are at risk equally, when they are in the same trenches doing the same job?

Ms. LANDRIEU. The Senator's first question, in my opinion, doesn't have a lot of merit. The second one does have a lot of merit, and I would like to respond to it.

There is an argument that comes out of the part of the Pentagon, not the whole Pentagon. There is something unsettling to a man on the front line, some active and some Reserve, when both are driving in a truck in Iraq, that they should get the same paycheck. They both should get $30,000 no matter what. No matter if the reservist makes $70,000 in the United States in their regular work, when they drive the truck in Iraq they should make $30,000. I don't hold to that position. I will tell you why.

Our Government benefits significantly financially, and the taxpayers benefit by not having to keep that Guard and Reserve full time, 24–7, year after year after year. We benefit as taxpayers, so we have more money to give out in tax cuts to everybody else. We benefit by not having to keep a force. We have 1.6 million Active-Duty, and we have 1.2 million Guard and Reserve who are now 40 percent of our force and growing every day. You can see during World War II, in the 1940s, we called up everybody. We had to fight the war. We called up everybody who would go, and even those who didn't want to go because they were forced to go under the draft. Our Active Forces are down at the lowest level since 1941.

I hope everybody can see this. Our Active Forces are down to their lowest level since 1941. You know who makes up this gap? After the terrorists attacked the World Trade Center and we are in a war, do you know who makes up this gap? The Guard and Reserve. They go to the front lines.

All I am talking about is since we asked them to go, just let their paychecks follow them by giving a tax credit to the thousands of businesses, large and small, in this country that are doing the patriotic thing, as acknowledged by our President and our

Secretary of Defense and the leadership. Can't we give a tax credit to keep their paychecks for their families? This isn't for the soldier. This is for their families. I think the men and women, active, traditional units, understand that. They get health benefits. They get other benefits when they are Regular Army or Reserve. The reservists don't even have a matching 401(k) savings plan. The reservists don't even have TRICARE. The reservists have very little, and we are blocking them from keeping the one paycheck they do have.

Some Senators don't think they should be able to get the employers' tax credit to keep bread on the table and keep their mortgages paid. This is the issue.

I understand the Pentagon disagrees with that. I understand their position. I don't agree with it. I think, yes, we should pay a differential, or at least allow reservists, when they go to the front lines, to keep as much of their pay as possible, even if they are in a fox hole next to a 10-year, full-time Army soldier. The full-time, traditional soldier gets other benefits and other compensation. They might get free housing. They understand that.

I think the active Army and the active military support this amendment. I am convinced of it. They are not jealous about the Reserves.

Mr. NICKLES. Will the Senator yield further?

Ms. LANDRIEU. For one more question.

Mr. NICKLES. I understand the Senator didn't like my first question because she is trying to give the Guard and Reserve additional compensation and additional pay but through a tax credit which goes to their employer which may take some time to get directly to the guardsmen or reservists who have been activated. If you want to pay them more, why don't you pay them more? Why don't you move an amendment through the DOD authorization bill? We did just last night under the good work of Chairman WARNER—or pay more through the Appropriations Committee so they would be paid on a monthly basis. I am not sure I agree with the Senator that there should be a differential. She may make an eloquent argument, but if she feels compelled they should be paid more, pay them more. But don't you think there is something lost by giving a tax credit that may or may not be funneled to the employees? It may take some time. There may be some lag. There may be some fraud, or it might not happen. But if you want to pay them more, pay them more.

Ms. LANDRIEU. I would like to answer the question. First of all, the Senator has drafted many amendments in his career. If he wants to help me modify this amendment, I would appreciate his help. It clearly is my intention to get this direct tax credit in a way that makes sure that these companies can take tax credits for the Guard and Reserve.

If we can write $137 billion worth of instructions to other companies about how this would apply to their tax credit, we could most certainly write a law or rule that allows these companies to be able to cover the paychecks, which they are doing already. This is totally voluntary. These companies don't have to do it. But if they are going to do it—some in Oklahoma and some in Louisiana are digging deep—they have budgets to meet. They are paying the guys on the front line and then paying to replace them in their offices.

I will tell you why I don't want to put it on the Armed Services bill. I see the chairman on the floor, the Senator from Virginia. What happens is—and the Senator from Oklahoma knows this—under our rules, the Defense Department gets just so much money. Why should I ask my soldiers to make a choice: Do you want a paycheck for your wife, or do you want a covered Humvee for your battalion? I am not asking them that question. You might want to; I am not. Do you want a paycheck for your wife, daycare for your children, or do you want a covered Humvee for yourself? How would you like to answer that question? That is why I object to putting it on the Defense bill.

This is a tax package bill. I don't have to take one Humvee away from them. I don't have to take one rifle away from them, or one helmet away from them. All I have to do is put them in this bill. And I am going to stand here until 100 Members of the Senate agree to do it, and if not we will be back here next year.

How much time do I have remaining?

The PRESIDING OFFICER. There is 7½ minutes remaining.

Ms. LANDRIEU. I will reserve the remainder of my time.

I yield the floor.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. NICKLES. Mr. President, I speak in opposition to the amendment, both in substance and on procedure, and procedure may be more important.

First, on the substance, I question the wisdom of whether we want to have in our active combat forces and our Reserve forces who are fighting side by side a significant pay differential for doing the same thing. Senator LANDRIEU wants to. We have not done that in the past. I don't think that is a smart thing to do. We have benefits for Regular Army and we have benefits for the Guard and Reserve.

I used to be in the Guard, but to say we want to have a significant pay incentive if a guardsman or reservist is activated over and above the soldiers who are full-time active duty, I question the wisdom of that. That is debatable.

I have no doubt in my mind if we are going to compensate them, and we are talking about compensation for our men and women who are fighting, whether they are Guard and Reserve or whether they are Active, that should be done in the Armed Services Committee. That should be done in the Appropriations Committee, not compensate them through the Tax Code. The Tax Code was not written to be, yes, we will finance their pay. We have a Tax Code that is favorable for people who are in combat situations. It is tax free. They do not pay income tax. That is for Guard and Reserve or Active Duty. If they are in a combat area, they do not have to pay taxes. That is fine. That is the way it should be.

The Senator wants a differential. The Senator wants to pay them more, pay them more. The Senator from Louisiana is on the Appropriations Committee, and we have the chairman of the Appropriations Committee and the Defense Subcommittee. If it is necessary to have a differential to make it work for our Guard and Reserve, have an amendment to pay them more. If it is 10 percent, if it is $10,000 or $20,000, the substance of the amendment is we will give a tax credit to some employers—some get a $15,000 tax credit and some employers get $20,000, some would be 50 percent and some are 100 percent. It is confusing. How are we sure that tax credit gets to the individual, and will it get to the individuals and/or their families immediately? I don't think that connection has been made.

My point is that is not the right way to do it. If you want to compensate them, compensate them through the appropriations process. Pay them more. We passed an authorization to increase pay for men and women.

Substantively, the amendment leaves a lot to be desired. Procedurally, it is worse. Procedurally, this was an amendment in the Senate; it was not in the House. I happened to be a conferee.

I heard my colleague from Louisiana say she called up House conferees and asked: Why didn't you accept this? A couple of comments. The Senator needs to call up conferees before the conference is closed. Not one Member raised this issue in the conference individually. I understand Senator BAUCUS and Senator GRASSLEY put it in a package of amendments and sent it to the House, and the House rejected that entire package. But we also considered dozens and dozens of amendments individually that people felt strongly about. Some were passed. I had some pass and I had some defeated. That is the legislative process. No one raised this amendment individually. The House did not reject this amendment individually. It was not sent to the House.

No Member of the Senate Finance Committee, Democrat or Republican—we had 23 members of the conference committee. Anyone, Democrat or Republican, could have offered this amendment. My guess is it would have passed the Senate conference. It would not have had my vote, but it would have passed the Senate. Conferees would have sent it to the House, but no one did.

That is the way we work a conference. Sometimes you win and sometimes you lose. To say, wait a minute, my amendment was not adopted, so therefore I will try and tie the Senate up for 3 or 4 days until you pass my amendment by unanimous consent—there are hundreds of amendments that were not adopted in that conference, hundreds. Every member of the conference had an amendment they wanted to have passed that did not pass. That is part of the legislative process. If we all came up and said, wait a minute, I feel so strongly about that amendment that did not pass I will hold the entire Senate up for a few days to bring that to the attention of the Senate, that is not a very effective way of legislating. There are effective ways to legislate.

If Members really want to increase the compensation of Guard and Reserve, they need to be talking to the chairman of the Appropriations Committee. They need to talk to the authorizing committee. They need to talk to the Pentagon. They need to ask, How can we make this work? Not have a system that says, Well, some companies get a tax credit, a bigger tax credit, and maybe it will flow to the employee or maybe flow to the employee a year later—that is not a good way to compensate them. Compensate them directly, as we should, not through refundable tax credits that may or may not get to the family. Try and work it out in a way that would be of benefit, not to say, yesterday they were trying to pass this as a freestanding tax bill but automatically it would be blueslipped in the House. They will not even consider that. That does not help the cause.

Procedurally, this approach of demanding we pass something by unanimous consent because it was not included in the conference when no one even raised it in the conference is just not the way you legislate. I can think of any number of Senators who were disappointed they did not get what they wanted in conference, and they could try the same thing. I don't think that is effective in legislating. I don't think it will work.

I make those comments. Substantively, the refundable tax credit going to employers is not the correct way to do it. The correct way to do it is, if the individuals who spend a lot of time on how much we should compensate our men and women in the armed services, Regular Army and regular military, as well as Guard and Reserve, if they are convinced we should have a differential for people serving side by side, then we need to be working to implement that through their committees and make it direct compensation so the men and women serving receive that paycheck immediately, not some deferred way that might come through an employer and might be subject to abuse.

I make those comments. The procedure is fatally flawed and substantively the approach is very well intended, but unfortunately I don't think substantively the amendment is the correct way to compensate the men and women who are serving both Active Duty and in the Guard and Reserve. We have to keep in balance what we are paying Active and what we pay Guard and Reserve, and having a big differential could cause a lot of problems.

Mr. WARNER. Will the Senator yield?

Mr. NICKLES. I am happy to yield.

Mr. WARNER. Mr. President, I was very pleased with the total cooperation on both sides of the aisle. We passed yesterday the annual authorization act in honor, by the way, of Ronald Reagan. We named it in his honor. However, it was a stack about three times the size of this when it reached the Senate.

I saw my distinguished colleague from Louisiana, who, incidentally, served on the Armed Services Committee with great distinction. She does have a keen knowledge of the needs of the military people. I respect that greatly.

In that bill we have made some progress this year on a very delicate package of benefit increases for the Guard and Reserve and made inroads to the TRICARE situation and made an impression on that in this bill. It is a balance we constantly have to watch between the active service—that individual, he or she, 365 days a year on call, their families likewise—and then the contribution of the Guard and Reserve, which has absolutely been extraordinary, as the distinguished colleague from Louisiana points out.

I can speak from some personal experience. Never before has the United States relied so heavily on the Guard and Reserve since, the Senator pointed out, World War II. I see my distinguished colleague here from Alaska. He had a very heroic career in World War II, and I had a far less distinguished career. I was 17. We did what we had to do. I saw it swelled to 16 million men and women in the Armed Forces. The chart also showed how we are down to a level of 1941. The reason for that is the spectrum of threats against this country—the standing armies and navies of other nations don't anywhere near approach what we have, and the weapons are so different. One ship today can do the work of four ships we had during World War II. So there is a reason for that leveling off.

The point I wish to make in conclusion is every time a pay in benefit is brought up for any one of the Active or the Reserve, it goes through enormous formulations in the Department of Defense by people who spend their total careers trying to maintain a fair and equitable balance between the Guard and Reserve and to meet their needs and to have that standing Army, Navy, Marine Corps, and Air Force that is required for 365 days of the year, and then proudly to have the Guard and Reserve, which can respond in time of need.

So with all due respect to my colleague from Louisiana, I would hope this type of legislation again would be analyzed in the normal course of the authorization and appropriations bills. I say to the Senator, you were so active as a member of our committee. That way, we can have access to that tremendous infrastructure within the Department of Defense and elsewhere that has the knowledge as to how best to structure the benefit package for the Active as well as the Reserve Forces.

Ms. LANDRIEU. Will the Senator yield for a question?

Mr. NICKLES. Mr. President, I appreciate the comments and question by my colleague from Virginia.

I yield the floor.

The PRESIDING OFFICER. The Senator from Alaska.

UNANIMOUS CONSENT REQUEST—CONFERENCE REPORT TO ACCOMPANY H.R. 4567

Mr. STEVENS. Mr. President, the Senate now has before it two of our appropriations bills. The first is the homeland security bill, H.R. 4567. That bill has $6.5 billion, among a lot of other money, for FEMA. That is to be used for those disasters that were not part of the hurricane disaster but for those such as the tornado damage and flood damage, the things that spun off from the hurricane. That money is going to be particularly used for that.

We sought to add some money to that bill for that purpose. We urged to let FEMA do its work and see how much would be needed, and if we have to have a supplemental next year we will have it.

We also have the military construction bill, H.R. 4837, before us. It has some $9.1 billion in it in the supplementals that were included in that bill that are primarily aimed at recovery from the four hurricanes to hit the Southeast, particularly Florida. There is no question that money is vitally needed, also. That money, by the way, would have been in the $6.5 billion had the homeland security bill passed, as we should have been able to do by October 1. It would have been available immediately and there would not be the emergency in that area now.

But homeland security has been traveling on a continuing resolution. As I pointed out this morning, the moneys that were allocated to FEMA under the continuing resolution since October 1 are supposed to last until November 20. They ran out last night.

I have not seen two bills of this type, of this magnitude, passed by the other body as rapidly as they passed these two yesterday. They passed them in less than 2 hours. There was not one single vote in opposition, not a single word opposing it. As a matter of fact, every Member of the House voted for each of those bills.

Now, we tried last night, when the bills were received here, to proceed with the homeland security bill, and that was not possible because of an objection.

Mr. President, at this time, I ask unanimous consent that this procedure under cloture on the FSC bill be put aside so that we may consider the homeland security bill.

The PRESIDING OFFICER. Is there objection?

Mr. HARKIN. Reserving the right to object.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. HARKIN. Reserving the right to object, I would say to my friend from Alaska that the precipitating cause of why we are here was the insistence of OMB, I am sure with the concurrence of the White House, and with the acceptance by the majority party on the Appropriations Committee, to fundamentally change an authorized bill in the Agriculture Committee under purview of the Agriculture Committee that would treat those who were hurt by the hurricane differently than farmers would be compensated in Iowa or Ohio or Pennsylvania or Wisconsin or a number of other States. And so it is not fair—

Mr. STEVENS. Regular order. Is there objection to my motion?

The PRESIDING OFFICER. Is there objection?

Mr. HARKIN. Mr. President, reserving the right to object, I ask the Senator, what is the unanimous consent request before the Senate right now? What is that unanimous consent request?

Mr. STEVENS. This is to proceed with the homeland security bill, H.R. 4567. And if it is brought before the Senate, I intend to ask unanimous consent that it be immediately adopted.

Mr. HARKIN. Mr. President, reserving the right to object, I ask the Senator if he is willing to modify his request as follows: that immediately upon passage of the homeland security appropriations conference report, the Senate agree to include in the military construction conference report a provision prohibiting the use of farm bill funds to offset disaster assistance in that same report?

Mr. STEVENS. Parliamentary inquiry.

The PRESIDING OFFICER. Will the Senator accept the amendment?

Mr. STEVENS. Is it possible for me to amend the conference report, as the Senator requests, by unanimous consent?

The PRESIDING OFFICER. It is a hypothetical inquiry, but the Chair believes you cannot amend a conference report.

Mr. HARKIN. Mr. President, reserving the right to object—

Mr. STEVENS. I have the floor.

The PRESIDING OFFICER. The Senator from Alaska.

Mr. HARKIN. Reserving the right to object, I had some conversations with the majority leader about this, and I would hope perhaps some further discussions could take place on resolving this.

Mr. STEVENS. Is there an objection, Mr. President?

Mr. HARKIN. Therefore, I object.

The PRESIDING OFFICER. Is there an objection?

Mr. HARKIN. I object.

The PRESIDING OFFICER. Objection is heard.

Several Senators addressed the Chair.

Mr. STEVENS. Mr. President, I still have the floor.

Mr. COCHRAN. I do not want to interfere with the chairman's right to the floor.

The PRESIDING OFFICER. The Senator from Alaska.

Mr. STEVENS. I am about ready to make another motion pertaining to the bill from the subcommittee that the distinguished Senator from Mississippi chairs.

I want to point out that the military construction bill, as I said, has the moneys for the immediate repair and assistance to the people who have been severely harmed in the wake of these hurricanes. And we would like to get that, too, before the Senate. So unless the Senator has some objection—

Mr. COCHRAN. Mr. President, if the Senator will yield, I want to point out the fact that this was a bill that was taken up in our committee back in June, and approved unanimously by the Committee on Appropriations, to fund the Department of Homeland Security. I want to lend my support and encouragement to the Senate to go along with the chairman of the full committee. It no longer contains any language to which there had been some objection posed by other Senators. So I hope the chairman of the full committee will be respected by the Senate and that his unanimous consent request can be agreed to.

The PRESIDING OFFICER. The Senator from Alaska has the floor.

Mr. STEVENS. Mr. President, the request of the Senator from Iowa is that we amend the conference report. The conference report contains a directed scoring concept that we put in there to assure the Senator that the program that he authored, against which we have sought to offset some of the budget authority required for this military construction bill, would be taken so we could proceed with that program. The drought program is not specifically authorized by law. The House of Representatives required, as is their right, an offset to the moneys that would be appropriated within the military construction bill for the drought program. And it was the House of Representatives that made this proposal.

In conference we did as I said, put in a directed scoring provision, and it was the directed scoring provision that the staff of the Senator from Iowa requested.

Now, it is that provision the Senator is using as a basis for objecting to consider even the homeland security bill. The homeland security bill does not have the drought program. He has objected to taking up the homeland security bill because we will not change the military construction bill.

Now, to me, in view of the crisis that faces this country, particularly in regard to the use of FEMA funds, I find that appalling—just appalling. And I am going to come back again and again and again.

I repeat the request. Mr. President, I ask unanimous consent that we place before the Senate the homeland security bill. It does not contain the drought provisions. It does not contain the provision the Senator objects to. I know of no other Senator who is objecting to that bill. So I ask unanimous consent it be brought before the Senate and the current procedure be put aside so we may consider it.

The PRESIDING OFFICER (Mr. TALENT). Is there objection?

Mr. HARKIN. I object.

The PRESIDING OFFICER. Objection is heard.

The Senator from Alaska.

UNANIMOUS CONSENT REQUEST—CONFERENCE REPORT TO ACCOMPANY H.R. 4837

Mr. STEVENS. Mr. President, now to the military construction bill. The President has asked us on repeated occasions to bring matters before the Senate and the Congress as a whole to deal with those disasters caused by the hurricanes. Those hurricanes came so fast, as we got one request, we got another request, we got another request, so we decided to put them all together and move them all.

I credit the wisdom of the distinguished chairman of the House Appropriations Committee, Chairman BILL YOUNG, for the ingenuity in doing that because we might have been facing separate bills on all of those supplemental requests had we not put them all together. We requested the Military Construction Subcommittee in conference to allow us to add that coalition, that combination of those hurricane supplementals, to put them on that bill.

That military construction bill passed both Houses. And obviously that is the quickest way to get the money to Florida and those other States. That money, some $9.1 billion in particular for the hurricane areas, is of extreme importance.

I point out that in that bill is directed scoring that shows the provision we put in this bill to obtain the budget authority that we did not have available to our committees—we borrowed in effect from a program that has budget authorities extending out until 2012—we have a provision in this bill that says that program cannot be impacted by this offset from now until the year 2007. So there is ample time to deal with how we adjust, if we wish to, the impact of this money on the program that Senator HARKIN authored. That offset is $2.8 billion against a program that is currently estimated to cost $8.9 billion, notwithstanding the fact that its original estimate was $2 billion. But it won't affect the program.

The Senator has 2 years before there will be any diminution at all. No one

would be hurt in any way. This is an accounting mechanism. We used budget authority and outlays. We had the outlays. We need the budget authority. So we borrowed, as we did 2 years ago, from that fund. It is an enormous fund, a noncontributory, mandatory program that builds and builds and builds.

I think the Senator has called attention sufficiently to this program. Many of us are going to examine that program in real depth. I know of no other program, even Medicare, that has contributions from the public at large, from people who are benefited by employees. It is not just taking of money directly from the taxpayers' funds, from the Treasury, and spending it without regard to any consideration at all as to cost.

Again, this MILCON bill must pass. I ask unanimous consent that the existing procedure for cloture on the FSC bill be put aside so that H.R. 4837 may be placed before the Senate for the purpose of considering it at this time.

The PRESIDING OFFICER. Is there objection?

Mr. HARKIN. I object.

The PRESIDING OFFICER. Objection is heard.

Mr. STEVENS. Mr. President, how much do I have left of my hour?

The PRESIDING OFFICER. The Senator has 47 minutes left.

Mr. STEVENS. I reserve the remainder of my time. I will be back.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SANTORUM. Mr. President, I rise to say how disappointed I am that we are holding back vitally important pieces of legislation in the Senate for in some respects—I understand the political shows that we all put on before elections. I understand that. But we are holding back money from States such as Pennsylvania, Louisiana, Florida, and others that right now need resources to help recover from the hurricanes that hit us in the eastern part of the United States. We have individuals—not just one, now two—who are holding us from passing that legislation to get those needed resources the Senator from Alaska suggested are vitally needed for FEMA now to get those resources to people who need it now.

I was on the phone the day before yesterday with my Governor. We were talking about the concern over the shortage of funds, the concern about the ability for FEMA to respond and get some of these businesses affected by floods in Pennsylvania up and going. The bill we have here on the floor right now, we could pass it right now and get this money into the hands of people in Pennsylvania, North Carolina, South Carolina, Georgia, Louisiana, Alabama, Mississippi, Florida, and other States that have been affected by the hurricanes over the last couple of months. We are being blocked because someone doesn't like a provision that takes money out of a program that was overfunded, that is spending enormous amounts more than what it was intended to spend.

So we have a program that was supposed to spend a couple of billion dollars, now is spending four or five times that amount. And the author of the program doesn't want to put any fiscal constraint on it. As a result of that, we are not getting flood relief. We are not getting hurricane relief.

This is the kind of pettiness in the Senate, partisanship, that gives this institution a bad name. This is the kind of stuff people sit at home and wonder: What are we thinking here. There are people hurting. The money that is being taken out of this program that is the reason for this bill not passing, most of that money isn't for 6, 7, 8, 9 years. The Senator from Iowa can come back next year and get his money back. If there is enough support in this body to get the money back in the program, come back next year and put the money back in the program. You want the money, prove to the Members here that this is an important enough program to get the money put back in next year. If it is that wonderful, if it is that broadly supported, come back with an amendment to an appropriations vehicle and get the money put back in.

But don't stop people who are in desperate need, who have to have furnaces for their homes as the weather turns cold in our area of the country, from having the resources necessary to respond to this disaster.

The money being taken out of this program is over the course of the next 8 years. We are holding up vital funds for people in need today. I can understand how people get upset with this place. Because a lot of the things we do around here don't make a lot of sense. It can be one person. If anybody doesn't think one person can make a difference, one person can make a difference here in the Senate, positively and negatively.

I will let you decide whether a program whose funding was cut over the next 7 or 8 years is as important, no matter what it is, as getting resources to people who are suffering now in America. You decide.

Then we have the issue on a bill, the tax bill that is before us. We have the Senator from Louisiana who is upset that she didn't get a provision in the tax bill. I would like to tell the Senator from Louisiana and every other Senator, I have a long list of things I did not get in this tax bill. I spent two full days sitting over in the House of Representatives Ways and Means room, pleading with the Congressman from California and others for provisions I thought were vitally important to the economy, to average working people, to people in my State, to people in other States, energy provisions.

I understand the Senator from Louisiana didn't get her provision in the bill. By the way, this is a bill having to do with foreign tax credits, foreign sales corporations. Everyone complains about putting extraneous provisions on. This is probably an extraneous provision to the core of this bill. I would make the argument that the provisions I was arguing for, which was the Baucus amendment—he offered a single amendment on this, the 5-year net operating loss carryback—to me that was important. There are businesses in my State that can't hire people because of the way the Tax Code works and unfairly treats them when they have a good year versus bad. It averages it out to keep things going smoothly. It is a vitally important provision, from my perspective, to create jobs and employment opportunities. It was defeated. The House defeated it. We passed it in the Senate. We pass lots of amendments in the Senate, and the House defeated it.

I had an amendment that was vitally important for me in my State and for the neighboring State of Ohio. I worked diligently on that amendment. It wasn't a $2 billion-plus provision; it was for $30 million. I look at the Senator from Mississippi, who may be thinking: $30 million? We worry about $30 million over 10 years—$30 million? I could not get a $30 million provision in this bill. It could have meant thousands of jobs for my State and neighboring States, and I could not get it in the bill.

Yes, I could grandstand before the people of Pennsylvania and grandstand before the people of America and say I am going to fight this bill and stand up for everything, and I am going to get my amendment passed and we are going to send it back to the House, and the chairman of the House Ways and Means Committee is a rotten guy. I could do that stuff, and I could act like a hero and make great political headlines. But do you know what. That is not going to get my provision passed, and I can guarantee that the chairman of the House Ways and Means Committee is not going to pass my provision if I call him names on the floor of the Senate, which has been done over the last 24 hours, and particularly if they don't agree with the substance of the provision. They are not going to pass it when they see political grandstanding at its worst a few weeks before the election.

What are they holding up? They are holding up a provision that—right now, this bill being held up stops tariffs from being levied on businesses in America, which is hurting jobs today. If we pass this today and get it to the President that much quicker, we would stop those tariffs. We hear so much complaining about how we need to be competitive internationally. This is a bill that will end unfair tariffs that are being imposed on American businesses. We are holding it back for this provision. Is it worthy? I will get into the worthiness in a moment. Even assuming it is the most worthy provision in the world, we are holding back something that is a vitally important piece of business that will get our businesses

help and help people be competitive in a world with a global economy.

We have political grandstanding going on. Let me assure anybody who thinks they can play this game on any amendment they may like and they are going to hold up the show because they didn't get their provision, which wasn't even offered by any individual Senator, an amendment that was so important—I understand it was so important to one particular Member, but I can tell you not one Senator on either side of the aisle offered this as a singular amendment to be passed.

As the Senator from Oklahoma said, I sat there for two days. If it was that important of an amendment, I can tell you there was a whole energy bill in there that is very important. You want to talk about important for national security and for economic security and stability? How about passing an energy bill when you have $53-a-barrel oil? You bet I wanted to get that done. Am I upset that we did not include that? You bet. Part of the legislative process is that you have to make choices.

This was a bill very narrow in scope. There were a lot of things we passed in the Senate that we didn't pay for, or we did pay for but the ''pay fors'' probably had more objections than the underlying amendments. When it came over to the House, all these ''pay fors'' went away. We had a requirement in this body on both sides of the aisle that this was going to be a revenue neutral bill. So there we are. We had to cut out provisions in the Senate bill. The provision of the Senator from Louisiana got cut. My provision was cut. The energy bill got cut. A whole list of very good pieces of legislation got cut. I wish they had not. I wish we could have found a way to pass them. We could not. Here we are.

Are we going to end tariffs and give our businesses the opportunity to compete globally? Are we going to grandstand and talk about how we are going to keep people here all night long? The Senator from Missouri will have to sit here all night long and other Senators have to sit in the chair all night long just to show how tough we are, how we are going to stand up and fight for our men and women in uniform.

Let's see. The Senator's amendment provides a tax credit for businesses who have employees who are guardsmen and reservists overseas. As the Senator from Oklahoma said, that seems to be a rather indirect way of increasing pay for Guard and Reserve. Also, I make the argument it is a very inefficient way. I have the magazine of the Reserve Officers Association of the United States in my hand. This magazine surveyed the Fortune 500 companies. I commend the article to my colleagues.

This was published in the January-February 2003 edition. What this said—by the way, obviously, I don't have an updated copy. I don't know whether they have done another survey. When they did the last survey, we found that, in 2003, only 17 of the Fortune 500 companies did not provide additional compensation for guardsmen and reservists who were deployed. In fact, well over a hundred—154—provide full compensation. In other words, they pay them fully, every penny of their salary—not just what the Senator from Louisiana suggested, $15,000, but fully pay their salaries. The rest pay some or most of their salary and benefits for the individuals and their families.

What are we going to do with this legislation? We are going to enrich the Halliburtons of this world and the other big Fortune 500 companies that are already providing these benefits. We are now going to give them a tax credit. We are going to spend $2 billion-plus to give tax credits to Fortune 500 companies and a lot of other companies that already are providing these benefits. Is that a very efficient, cost-effective way, in a time of big deficits, to pay Guard and Reserve a lot of money? I argue that is about as inefficient a way as possible to do this.

Who are we benefiting here? Certainly the Fortune 500 companies. Are we benefiting the reservists or the Guard person when all but 17 of these companies are giving benefits now in excess of their pay that the Government pays them? So if we send those companies that money, all the company has to do is say: Thank you for the money. We are already paying them, but we could use the money. We can increase our profits a little bit. Thank you very much. There is no obligation in this legislation that they have to take that money and pay even more benefits. In fact, 154 of the companies already pay full benefits. They could not pay any more benefits.

I understand the Senator from Louisiana wants her provision included. We all like to get our provisions included. We also would like to go home. We would all like to get our business done. We would all like to go out and get in touch with our constituents and find out what they really think instead of what we think here is best for them. We do a lot of that around here—what we think is best for everybody. I argue that this provision, which is going to enrich a lot of Fortune 500 companies, is the most inefficient way possible to solve this problem. If you want to pay guardsmen and reservists more, talk to the Senator from Virginia, talk to the Senator from Alaska, talk to the new chairman of the Appropriations Committee, the Senator from Mississippi, and you ask them whether we can structure something so that we are now going to compensate Guard and Reserve more than we are going to compensate Active Duty people. That is a legitimate issue. I believe we can have that debate.

But to make all this fuss about how we are going to stand up for all our guardsmen and reservists and fight for them until the end, let me assure the Senator from Louisiana, at 7:40 tomorrow we are going to pass this bill. If the Senator from Louisiana wants to make everybody sit here until 7:40 tomorrow night, we can wait until then, and at 7:40 this bill will pass and her provision is not going to be on it, and her provision is not going to become a Senate bill passed by the Senate between now and then. We can wait until that time. We can wait and let the tariffs continue to be levied another day on our workers here in America.

We can wait and have provisions having to do with energy such as the Alaska pipeline another day; we can wait so we can have the political opportunity to talk about how important Guard and Reserve members of our military are; but this is an inefficient and costly way of solving the problem.

I argue that is as much a reason why it did not pass as anything else. The idea that someone believes their provision is so much superior to everybody else's, I think that probably every Member of the Senate had a provision they wanted or they would like to have seen in that bill that they did not get.

The thing about legislating is we do the best we can. We work hard and live to fight another day, and we do so in a way that builds relationships, tries to get things done in a collegial way. I make the argument that keeping Members here on Saturdays, Sundays, Mondays, and Tuesdays during recesses when people had scheduled events, when their campaigns are, obviously, at this point very much underway, when nothing substantively that they are proposing is going to happen, is not the most effective way to win friends and influence people.

Now, if I were for the Senator's provision—I do not know whether I will ultimately end up voting for it, but I ask her, if I were a supporter, to please give this proposal a chance instead of making it a proposal that has fostered some ill will around this place. We have an opportunity to do something right, pass three pieces of legislation that should be passed. We have disaster assistance that should be out today, as well as homeland security. I wish I had a nickel for everybody who talked about how much more money we need for homeland security. We listened to the debate the other night where it was said we were not spending enough on homeland security.

Well, we have a Homeland Security bill. The subcommittee chairman is in the Chamber. I do not know what the increase is for homeland security in this bill from last year, but I suspect it is substantial. That money is not being spent. We are in the next fiscal year right now. We could be spending that money right now. We could be securing our homeland right now.

Mr. COCHRAN. Mr. President, will the Senator yield?

Mr. SANTORUM. I would be happy to yield.

Mr. COCHRAN. In fact, I can answer that question partially. I looked at the legislative notice that was published back in September when we had the bill on the Senate floor. We are increasing by 9.2 percent the spending

that goes to the Department of Homeland Security overall. So by withholding this funding—we are into the new fiscal year as the Senator points out—we are allowing individual programs administered by the Department of Homeland Security to suffer. We are requiring them to give up, in effect, the increases that have already been approved by this Senate and in the conference report on the Homeland Security appropriations bill.

Some of the programs, for example, that have been increased substantially are Project Bioshield, the Transportation Security Administration activities, the U.S. Coast Guard. Those are fully funded at the administration's requested level, which were substantially increased over the last fiscal year.

So this is causing real harm, and the Senator makes that point.

I point out specifically how it is causing the harmful results: new technologies to enhance security of our country by identifying people coming into the country who are using visas. We have new technologies now that can be used to screen and to make sure people are who the visa says they are. This is something that is not going to be utilized for this period of time in the new fiscal year because the increases in funding are not being made available. So this is really serious. We need to pass this Homeland Security appropriations conference report as soon as possible. We need to do it today. We needed to do it when it was ripe for consideration yesterday.

It does not contain any provision that is being opposed by the other side.

Mr. SANTORUM. I ask the Senator from Mississippi, is there any provision in this bill that is being objected to by anybody, that the Senate is aware of, on either side of the aisle?

Mr. COCHRAN. There is no objection that I have heard from any Senator. There is a disaster provision that was included in this bill. It has now been taken off the Homeland Security appropriations bill. It has been added to the Military Construction appropriations bill. This bill is clean of any provision that any Senator had opposed, to my knowledge.

Mr. SANTORUM. I then will reiterate, if there is no objection to this bill, I ask unanimous consent that—I yield to the Senator from Alaska, since he is the chairman of the committee, and ask if the Senator would like to make a unanimous consent request because I think this is important. Since we have now established beyond a shadow of a doubt that there is no objection by any Senator to this bill on either side of the aisle, I ask the Senator if maybe this would be an opportunity that we could have to pass this bill and get these needed funds for homeland security purposes. At a time of war when our threat has been elevated, where they talk about all the danger that is in front of us as we lead up to this election, not to be able to pass this Homeland Security bill at this time would be unconscionable, so I would be happy to yield to the Senator from Alaska to ask for the opportunity to pass this bill since nobody is objecting to any of the substantive provisions.

The PRESIDING OFFICER. The Senator from Alaska.

Mr. STEVENS. Mr. President, the Senator from Pennsylvania is correct. We have heard no objection. As a matter of fact, we have a wrap-up procedure, is what we call it—and the Senator is familiar with that—at the end of each legislative day. This Homeland Security bill was in that. We know that absolutely no one objected to the Homeland Security bill in the first instance and later the Senator from Iowa, Mr. HARKIN, came back and objected. So this bill is held up apparently because the Senator from Iowa wanted to have some other thing in the way of getting on Military Construction.

I am happy to renew the request.

Mr. SANTORUM. If the Senator would yield just to clarify, the Senator from Iowa came back and objected not to any particular provision in this bill; there was no objection to the underlying Homeland Security bill?

Mr. STEVENS. I know of no objection any Senator has raised to the Homeland Security bill. The Senator from Pennsylvania is absolutely correct about that.

I renew the request, and that is that we set aside the current cloture procedure and that the Homeland Security bill be laid before the Senate, H.R. 4567; that the conference report be agreed to and the motion to reconsider be laid upon the table.

The PRESIDING OFFICER. Is there objection?

Mr. HARKIN. I object.

The PRESIDING OFFICER. The objection is heard.

The Senator from Pennsylvania.

Mr. SANTORUM. The Senator from Iowa just objected again to this bill, which nobody objects to, being passed. Again, it is 3:30 eastern time on a Sunday and I suspect the viewing audience of this debate is not particularly high, but I would also suspect that those who are viewing are sitting there with furrowed brow asking: What was that all about? No one objects to this bill, yet there is an objection.

Our country is at war. Our country is at war. There are threats to the homeland. We have the Democratic nominee for President, a Member of this body, who I suspect might have some say about what Members on his side of the aisle will do in a few weeks before the election, who complains constantly that we are not spending enough money on homeland security, that we have not defended the homeland as vehemently as we should have. Where is the Senator from Massachusetts today to put those words into action, to get this bill passed so we can get this money spent now?

It is all a bunch of smoke and mirrors: Oh, yes, we are for all this stuff but a provision having to do with land conservation that is spending four and a half times more money than was originally intended to be spent over a 10-year period of time, the money in the outyears of that program have been reduced to pay for immediate drought assistance in almost the very same area of the country, and it is in a separate bill than the Homeland Security bill and that is why homeland security is not going to pass right now. That is why our homeland will go less defended today than it could be. The furrowed brows are justifiable in this case. This is wrong.

We may be lucky. We may be lucky. The 5 days or 4 days I understand we are talking about, maybe Thursday before we can potentially get the bill passed, the 5 days—we could have passed it yesterday by consent, so Saturday, Sunday, Monday, Tuesday, Wednesday—6 days. The 6-day delay may not cost anybody's life in America. It may not cost a life. We might not have resources that are deployed because 6 days sooner we would have signed this bill and those resources would have been available to maybe protect somebody in America. We will never know that—or maybe we will. But the fact is, to hold up a piece of legislation that is a vital national security interest, for a very small piece of legislation where money was to be taken from it years down the road, I think, reflects the worst of what people see in Washington, DC.

I am hopeful the persistence of the chairman of the Appropriations Committee and the persistence of the chairman of the Homeland Security Subcommittee over the next 24 hours that we will be here, or 27 hours that we will be here, will eventually pay off. I know there are Members on the other side of the aisle who are working diligently to try to convince the Members on that side to move America's business forward. Let me assure everybody—I think we all know this—that the legislation, the homeland security legislation, the drought and disaster relief, the hurricane relief money, and the FSC/ETI bill, the JOBS bill having to do with foreign sales—all three of those are going to pass just as they are. There will be no amendments. They are not allowed under the rules. There will be no separate deals that will allow other provisions to pass to make everybody happy.

They will all pass. They will all pass as if, in fact, we just stood up here and called for the vote on them right now. There will be no difference.

The question is how long are some individuals going to make the Senate wait. But candidly, I complained about not being able to be with my family today. It is Sunday. Usually I take Sundays off and try to be home with my six children. I will tell them, they might be watching, I will be home soon, I hope.

But that is a minor inconvenience. That is meaningless. Our job is to be

here to do the job we have to do to get what we need done for the American people. The reason I am here today and the Senator from Mississippi and the Senator from Missouri and the Senator from Alaska and the Senator from Kentucky and the Senator from Hawaii—we are here because we want to get the people's business done. We want to cut those tariffs. We want to eliminate them. We have a chance to do that today. We want to get that money out for disaster assistance. We have a chance to do that today. We want to get that money to the law enforcement agencies and the transportation agencies to protect people here at home. We can do that today.

But, because of two individuals, we are not. They may stand here and give speeches about how heroic their effort is, and how important their job is to get these provisions they have worked so hard on, but we could all be doing that.

Mr. President, I ask unanimous consent to have printed in the RECORD a list of all of the amendments considered in the Finance and Ways and Means Committee conference report on October 5 and 6.

There is a whole page of them. There are 23 amendments on the first day and another 10 amendments on the next day. We had 33 amendments also considered. I would argue the amendment of the Senator from Louisiana was not offered, except that at the end of the markup all the amendments that no one wanted to offer that were in the Senate bill, that were not offered individually, we threw them all together in one big package and offered them, and her amendment was in the big package that no one thought was important enough to offer individually.

I will not argue her provision is not important. It is, obviously, certainly important to her. But not one member of the Senate Finance Committee, Republican or Democrat, House or Senate, offered it. And we are being held up on the Senate floor. I don't know why. It is not going to become law. At some point you have to say, getting those tariffs off the backs of American business is more important than even the most important provision in your heart. Trust me, I had some of those amendments. It is time for responsible legislating. It is about time we get serious. Let's get our job done. Let's get our job done for the American people. It is decided. Nothing is going to change. It is just a matter of when we are going to do it.

I hope through the good work of the Democratic and Republican leadership—I know Members on both sides are working diligently to try to work through this—that we stop the tariffs that are making us globally uncompetitive; that we start funding homeland security at the levels the President and this body said they wanted; and that we start getting the resources to people all throughout the eastern part of the United States, including the Commonwealth of Pennsylvania, get the resources into the hands of the small business people and homeowners who have been hurt by the floods and storms of the last couple of months. That is what this is all about, those three things, three vitally important provisions, three bills that could pass in 5 minutes. In 5 minutes we could call those bills up and pass them.

I feel like ''Name that Tune.'' I bet we could do it in 4 minutes, maybe even in 3 minutes we could pass all these bills. And, by the way, they are going to pass. They may not pass tomorrow—well, one of them will pass tomorrow. Maybe Wednesday. Maybe Thursday. They are going to pass. So what are we accomplishing? We are hurting the American public. We are costing jobs. We are adding insult to injury to people who have been devastated by natural disaster, and we are making our country more vulnerable by not having increased homeland security protection at home. That is what we are accomplishing.

Congratulations, Senate. Good job. Keep those tariffs high. Make us uncompetitive. Don't give that money to people who suffered through natural disasters. Let's keep it here in Washington because we have some political points to make.

I have some political points I need to make. You know, you can wait. You can wait, Transportation Security Agency, for that additional funding. You can wait, Coast Guard, for that additional funding. You can wait, because politics here in the Senate comes first. Opportunities to show the folks back home I am fighting for you, that comes first. Amazing. Amazing.

The most amazing thing is it is a futile fight. All three bills will pass without changes. Do you know why? Do you know why I am certain, why the Senator from Mississippi is certain? Because that is the rules of the Senate. They cannot change. They are conference reports. They cannot be amended. So what is this all about? It is about putting personal political interests above the interests of those hurt by natural disasters, those who are being hurt by high tariffs, and those who would like to feel more secure in our country with increased homeland security spending. That is what it is about. Let's tell the story. Let's tell the story about what is going on here on a Sunday afternoon in the Senate. Everyone is safely at home, we hope, watching their football games or the league championship series. What is going on here in the Senate is political demagoguery at its highest level. Let's call it for what it is. We need to stop this. We need to get our job done. We need to go home and talk to our constituents and work on problems.

I ask unanimous consent, again, on the issue of homeland security, that we call up the Homeland Security conference report that has not been objected to on any substantive ground, that we call up the Homeland Security Subcommittee appropriations conference report and pass that bill by unanimous consent.

The PRESIDING OFFICER. Is there objection?

Mr. HARKIN. I object.

The PRESIDING OFFICER. Objection is heard.

Mr. SANTORUM. Mr. President, I ask unanimous consent that the disaster assistance conference report and the Military Construction conference report be called up, and I ask unanimous consent they be passed.

The PRESIDING OFFICER. Is there objection?

Mr. HARKIN. I object.

The PRESIDING OFFICER. Objection is heard.

Mr. SANTORUM. I ask unanimous consent that the FSC/ETI conference report be called up and passed by unanimous consent to stop the tariffs from being imposed on our workers across the country.

The PRESIDING OFFICER. Is there objection?

Mr. HARKIN. I object.

The PRESIDING OFFICER. Objection is heard.

Mr. SANTORUM. Mr. President, I say to the Senator from Mississippi that we could have done that in less than a minute. If we had not heard the word ''objection'' three times, those bills would be passed right now.

By the way, mark my word. All three will be passed just as they are, but we are just going to have to wait a while because while the business of the Senate is done, the talking isn't done. While the business of the American people has been done, the politics isn't over yet.

At this point I yield my time, and let the show begin.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. HARKIN. Mr. President, first of all, I would like to respond to the Senator from Alaska who said this bill would not affect the program because it took funds out of the outyears. That is not true because this is a contractual program. Farmers have to sign 5- to 10-year contracts. If you take money out of the outyears, of course, that affects how the programs operate today, the ability of USDA to sign 5- to 10-year contracts today.

The Senator also said he did not know of any other program like this, which is a mandatory program without a fixed spending limit. I am sorry, but there are a lot of programs like that in our agriculture committee. The programs are like that. I see our chairman sitting here. The commodity programs are exactly like that. Apart from agriculture there are a lot of programs that operate that way.

I will respond to my friend from Pennsylvania. Regarding getting money out, I will point out that my friend from Pennsylvania said there are not too many offices open in Pennsylvania today. I also point out that he may have forgotten that Columbus Day

is a national holiday, and I don't think there will be many offices open in Pennsylvania that day either.

The Senator from Pennsylvania went on with quite inflammatory-type language about getting these bills done. I will point out that the MILCON bill passed the Senate on September 20. I never heard—maybe I missed it—the Senator from Pennsylvania speak so heatedly after September 20 about the necessity of getting this bill done. It has been out of here since September 20. Yet I only heard him talking about the necessity of passing it today. I never heard about it before. This is all politics. That is all it is.

I point out that homeland security passed September 14. I have not heard the Senator from Pennsylvania complaining before about how we need to get the House to act and get that done in a hurry. I had not heard it until today. It is just politics. We all know that.

Again, I am somewhat surprised that the Senator from Pennsylvania is willing to take money out of the pockets of Pennsylvania farmers and use that money to pay for farmers in Texas or Colorado or Wyoming or Montana. He is willing to do that.

I will point out again that the Senator talked about going back to appropriations to get funds for conservation back later. But we passed this conservation program in the farm bill, not in appropriations.

I also point out to the Senator from Pennsylvania that just yesterday, on a resolution that was before this body, 71 Senators voted affirmatively that this disaster money ought to be emergency spending and not offset out of farm programs. Mr. President, 71 Senators voted yes; 14 voted no. I guess it comes as no surprise that the Senator from Pennsylvania was 1 of the 14 who voted no. So he is in favor of taking money out of the farm program to pay for disasters. Surprise, surprise. Maybe it is not a surprise for some.

But I point out that Pennsylvania, the State he represents, is in the hurricane assistance package. They get the hurricane assistance without having an offset, along with Florida, Georgia, Alabama, Virginia, and a few other States.

One can be selfish about things and one can look upon disaster assistance as a national priority.

I note that a number of Senators from other States that were affected by the hurricane voted the other way. The Senators from Virginia, Florida, Georgia, the Carolinas, to cite some, all basically voted to say: Yes, we are happy that the hurricane money comes to us. But you are right, other disaster money ought to be emergency. But not the Senator from Pennsylvania. He voted to take it out of the farm program himself.

I wish he would follow the lead of some other Senators who are affected by hurricanes in other States. They said unselfishly: Yes, we need help. I believe they do, too, and it ought to be an emergency. But I also believe that farmers who suffered from drought or flooding in Iowa, floods in North Dakota, suffered from tornadoes in Oklahoma, hail in Minnesota, wind damage in Wisconsin, pest infestation in Pennsylvania, they too suffered a disaster.

That ought to be taken out of emergency spending just as we have done for the last 50 years, with one exception 2 years ago. That was corrected right away.

The Senator from Pennsylvania stands in a small minority who believe that disaster money ought to be taken out of the farm program.

The Senator from Pennsylvania went on talking about how much money this conservation program costs. He said it will cost four and one-half times what it was supposed to. That is a guesstimate. We really do not know exactly and for certain what it is going to cost, and I don't think it is going to cost that much. But, nonetheless, he went on about this program. I will check the record. I could be wrong in my interpretation. But I believe he said we should not have programs like that, that we ought to come back and get appropriations for them.

I just wonder. Of course, the Senator from Pennsylvania is no longer in the Chamber, but I am sure someone will tell him what I said. I would like to ask the Senator from Pennsylvania whether he wants the same rules to apply to the milk income loss program. Would the Senator from Pennsylvania like the same rules he is trying to put on the conservation program to apply to the milk income loss program? I bet he wouldn't because that affects his dairy farmers in Pennsylvania.

We put the milk income loss program in the farm bill. It was estimated to cost $1.7 billion through fiscal 2005. Later, CBO said it would cost more than $4 billion. Already it has cost $2 billion. I don't hear the Senator from Pennsylvania griping about that and saying that is not right, that if it was supposed to have cost $1.7 billion, that is where we should have capped it.

But the milk loss program will be coming back and we will see if the Senator from Pennsylvania would like to apply the same rules to that. In fact, the Senator from Pennsylvania wants to extend the milk loss program. He does not want to just let it expire but wants to extend it. He does not care how much it costs because it is uncapped. It is another one of those uncapped entitlement programs, I point out to the Senator from Alaska, that is paid for by the taxpayers of this country. There is no cap on that program. It is an entitlement program paid for by the taxpayers. Again, I point that out to the Senator from Pennsylvania, maybe he would like to go in there and get some money from that program.

I will talk about the conservation program for a few minutes. The Senator from Pennsylvania said what gives us a bad name around here—I don't remember all that he said—is the procedure of the Senate , like this afternoon. What gives us a bad name is when we agree to do something, enact it, and our constituents rely upon that, and then we come back later and a few people, exercising their power, run roughshod over the will of the majority and change the program we had promised to the people, We have enacted this program for you.

In the farm bill, we fought out these issues. We hammered them out and made agreements and we created this Conservation Security Program. Our constituency—farmers, conservationists and environmentalists and others around the country—were told, OK, you can rely on these 5- to 1-year contracts.

Now a few people have come back to thwart the will of the majority. As I pointed out, 71 Senators voted against taking an offset for disaster assistance, not to take it out of conservation. That is overwhelming. The House of Representatives overwhelmingly supported this program, but OMB, under the guidance of the White House, and with the concurrence of a few people in the House leadership and Appropriations Committee, were able to change it. That is what gives us a bad name around here, that a few people can thwart the will of the majority and change those programs.

Again, this is a program that was historic, the whole conservation title of the farm bill. When the President of the United States signed the farm bill in May of 2002, he said one of the main reasons he was signing it was because of the historic increase in conservation, an 80-percent increase. We had a lot of programs in there for conservation, and we had a new program called the Conservation Security Program. Everyone said good things about it, including the President.

Unlike other conservation programs, the Conservation Security Program took a comprehensive approach to conservation. It not only encourages the adoption of new practices, it rewards those who are already implementing important resource-conserving practices. CSP, as it has come to be known, the Conservation Security Program, was designed specifically as an open national program, equivalent to the commodity programs except instead of being paid in relation to farm commodity production, farmers and ranchers are now going to be paid for producing environmental benefits such as cleaner air, cleaner water, saving soil, enhanced wildlife habitat, and the adoption of energy-conserving practices.

The CSP is also clearly a way to provide all producers across the Nation the tools and opportunity to implement conservation practices and to lessen the need for environmental regulations. It also provides incentives for producers to create and adopt innovative conservation practices.

Again, those who would severely restrict this program and kill it, as they

have been trying to do, are opening the door for environmental regulations. The people of this country want cleaner air. They want cleaner water. They want to stop soil erosion. They want to clean up our rivers and our streams and our lakes. They want to stop what is happening in the Gulf of Mexico with sediment and nutrients coming down the Mississippi. That is what this program is designed to do, to encourage farmers on a voluntary basis to implement these practices.

The funding for CSP was like that for a commodity program. We were going to make producing conservation benefits much like a commodity. The commodity programs have no fixed cost limit, no cap, I say to the Senator from Alaska. They are uncapped programs, just like the milk income loss program is an uncapped program. There are a lot of these. We do this in the Agriculture Committee and in other committees, a lot. They are restricted not by an arbitrary cost limit but by the eligibility requirements.

In order to get these payments, a farmer has to carry out substantial practices that will produce real conservation benefits. If you will do those things, you qualify. But you have to save your soil, protect your water, have cleaner air, enhance wildlife or conserve energy and those types of things. Then you qualify.

What a few people did under the guidance of the President was to come in and take a lot of money out of the conservation program. I was surprised at this because two nights ago in the debate in St. Louis the President proclaimed his strong support for conservation. I said, wait a minute, as I was watching this debate. At the very moment the President was saying he supported conservation, he had his people up here on the Hill taking over $2.8 billion out of conservation, gutting conservation, taking out the money.

The President cannot have it both ways. You cannot on television tell the American people you are for conservation and have your people up here taking the money out of conservation. That is exactly what the President and his people are doing. We all know it. That is what this fight is about.

I say to the Senator from Pennsylvania, I am here to fight for farmers. I am here to fight for a cleaner environment. I am here to fight to help save and improve our nation's soil, clean our water and our air, enhance wildlife. I am here to fight to give our nation's farmers and ranchers the tools they need to be better producers, to be better stewards of their land. I am here to fight for our farmers. I am here to fight for the farmers of Pennsylvania, too. Even if the Senator himself won't fight for them, I will fight for them. I don't want to take money away from the farmers in Pennsylvania to send to Iowa or to send to Wyoming, Oklahoma, or anywhere else there is a disaster.

Just as all taxpayers of this country are giving some of their taxes to help the victims of the hurricane, so, too, should we all, as we have for the last 50 years, provide assistance for those who suffer from tornados, floods, hailstorms, drought, and everything else. It is a national problem.

The Senator from Pennsylvania may want to take money away from his farmers. I guess he did that yesterday when he was 1 of 14 who voted to take money away from his own farmers to send to those who suffered a disaster.

I point out that Pennsylvania is in the hurricane assistance bill. They are going to get help and it will be emergency spending. Farmers in Wisconsin and Minnesota, farmers in Ohio and Missouri and other places, were not affected by that hurricane. What about them? Why should they be treated differently? Their disaster hurts them as much as the hurricanes hurt people in Florida, Georgia, and Pennsylvania. We ought to care as much about the farmers who were hit by a tornado or a mud slide or hail storms, acts of nature over which they have no control.

Our farmers work hard. They produce the food and the fiber for our country. We have the best, most bountiful, cheapest food supply anywhere in the world, thanks to our farmers. They control a lot of things, but one thing they cannot control is the weather. Yes, there are crop insurance programs, but they do not cover all crops equally or sufficiently in so many situations.

We have always said, when you get hit by a disaster, we will be there to help, just as we are for people in Pennsylvania. But I would hope the people of Pennsylvania—I know the people of Pennsylvania. They are not a selfish people. The people of Pennsylvania would want to help farmers in Iowa or Missouri or Wisconsin or Ohio. They would want to help farmers who lost a crop because of a flood in North Dakota. They would want that. They would want the Nation to do it, just as we are helping them.

I am sorry that the Senator from Pennsylvania does not see it that way. I am sorry he can't be 1 of the 71 who voted to treat disaster assistance as an emergency and not take it out of the pockets of farmers. Our farmers work hard. They do not deserve this kind of treatment.

The dairy farmers in Pennsylvania who got money under the milk income loss program, well, we put that in the farm bill for those dairy farmers in Pennsylvania. It does not affect my State as much as it does Pennsylvania.

Well, I suppose you could say: We got ours. It is almost as if the Senator from Pennsylvania—it is almost as if I hear the words: Well, we got ours. To heck with everybody else.

Well, look, we are all part of this country. We are all part of this Nation. When a disaster strikes someone in Hawaii, we ought to be there for them. Or Alaska, if there is an earthquake in Alaska, you bet we ought to be there for them. We should not take it out of Alaska's highway money, or we should not take it out of money that goes to Hawaii for medical care, or something like that. We should not do that.

But evidently that is what some people around here are thinking. We should not say to the poor people in Florida: Look, I'm sorry. We'll give you hurricane assistance, but we are going to take it out of your highway money; we are going to take it out of your Medicare; we are going to take it out of other Federal programs that go into your State. That is not a caring kind of country if we do something like that.

So I would hope that we could be a little more caring and considerate of those who have suffered disasters in this country and make sure that they, too, are treated just like we are treating people in Florida and Pennsylvania and the other States that got hit by the hurricanes.

That is why I am here. That is why I am holding this up. That is why I wanted to get this corrected. I will fight—I will use every rule—I am not breaking any rule of the Senate, and I will not break any rules of the Senate—but I will use every rule I can of the Senate to stand up for farmers and for conservation and to stand up for people who were hit by disasters, to stand up for the agreements that we reached in the farm bill.

We voluntarily and knowingly reached all of these agreements in writing the farm bill and we stayed strictly within the budget we were given for it. We signed the conference report on the dotted line. Both the House and Senate passed it by strong bipartisan majorities. The President signed the bill. Now the President and others want to come back and say: Well, everything is OK except this one program. We will take out this one.

I am sorry, that is what gives this place a bad name. You cannot give your word you are going to do something and then you go back on it. You cannot do that around this place. The President has sent his people up here to do that.

If the President really wants to support conservation, he ought to tell his people: Look, put that disaster assistance in the emergency spending package just as you did the hurricanes. That is the fair, the just, the reasonable, and the compassionate way of doing it.

Mr. President, how much time do I have remaining of my hour?

The PRESIDING OFFICER. The Senator has approximately 38 minutes remaining.

Mr. HARKIN. Mr. President, I thank the Senator from Hawaii for permitting me to go ahead of him.

I yield the floor at this time.

The PRESIDING OFFICER. The Senator from Iowa yields the floor.

The Senator from Hawaii is recognized.

Mr. AKAKA. Mr. President, I commend the Senator from Iowa for his

stalwart stand for the farmers of America. He has been a strong Member of the Senate for our farmers over the years. I commend him for his statement.

Mr. President, I rise to express my views on the conference report to accompany H.R. 4520, the Jumpstart Our Business Strength Act, to be on record as to why I voted against cloture. On balance, although the package contains a number of helpful provisions, it ultimately falls short of what we owe to the people of my State and the people of this country.

Initially, I would like to thank my colleagues for their hard work on this bill, which contains some good provisions to help American businesses and works toward ending harmful tariffs currently placed on many of our exports. The conference report also contains some much-needed boosts for renewable energy and renewable fuels. It will expand production tax credits to include renewable sources of electricity, such as geothermal and solar energy, landfill gas, trash combustion, and open-loop biomass. It will provide a per-gallon excise tax credit for ethanol blended by refineries and a 50-cent-per-gallon income tax credit for each gallon of biodiesel used or sold as fuel. As a longtime advocate for renewable and alternative energy sources, I believe these incentives are important to help our renewable energy businesses in Hawaii increase the amount of renewable energy used to produce electricity.

However, there is much more that the final conference agreement lacks that leaves me no choice but to oppose the measure. For example, I am disappointed that some of the measures in S. 476, the CARE Act, which passed the Senate by an overwhelming vote of 95 to 5, did not make it into the bill. In particular, section 310 of the Senate's CARE Act bill is important for our teaching hospitals. The provision allows support organizations to utilize debt to improve teaching hospitals' real estate endowment. This would assist charitable teaching hospitals in my State of Hawaii and other States as well. Regrettably, this provision was not incorporated into the conference report.

I supported another provision in an amendment offered by my colleague from Louisiana, Senator LANDRIEU, that the Senate accepted by voice vote. This amendment sought to improve the credit for employers of the men and women in the Ready Reserve or National Guard who have been called to active military duty. In light of large deployments underway in my State of Hawaii and other areas of the U.S.—as the Senator from Louisiana said earlier, about 57 percent of Hawaii's Guard and Reserves have been called up—this was a very significant amendment to show that we honor the commitment that the Reserves and Guard have made to our country. I am very disappointed that this amendment was stripped in conference, despite a strong show of support by this body.

I understand that there may be efforts to try to rectify this problem, and I hope that we get somewhere, but it should have been remedied during conference on this measure.

I am pleased that the bill includes long-awaited provisions to shut down certain abusive tax shelters. However, as meaningful as some of those tax loophole closers are, the Senate had sought a stronger package to further restore faith in corporate America. Although this represents a missed opportunity, I hope that we will revisit the matter in the next Congress.

In addition, I am pleased that the conferees heeded calls for fiscal responsibility and used provisions such as those ending tax shelters to fully offset the package. However, depending on whether the leadership of our Nation or this body changes next month, we may face tremendous additional costs years from now when tax cut extensions and expansions in the package are further extended or possibly made permanent. I hope that we are able to stick to fiscal prudence when working on future tax cut measures, given important domestic and international priorities that could continue to suffer from further major decreases in Federal revenues.

I also oppose this bill because it represents a missed opportunity related to the U.S. Department of Labor's overtime regulations. Since the Department published its proposed overtime regulations in the Federal Register in March 2003, Members of Congress have been trying to improve the regulations to ensure that all workers are not adversely affected by these changes. However, our concerns have not been heard by this administration. Rather, this administration continues to disregard the wishes of the majority of the Members in this Chamber that believe certain portions of the overtime regulations will take away overtime protections for some workers. On May 4, 2004, the Senate passed an amendment introduced by Senator HARKIN that would allow for full implementation of any regulations that expanded or improved overtime coverage, but would prohibit the Department of Labor from implementing any new rules which would take away overtime protections currently guaranteed. And, once again, in conference, the provision was taken away.

Finally, an extremely important provision has been omitted from the conference report. By an overwhelming vote of 78 to 15, the Senate approved an amendment offered by my colleagues Senators KENNEDY and DEWINE to provide the Food and Drug Administration, FDA, with the authority to regulate tobacco products. I appreciate their leadership on this critical issue.

For too long, the FDA has not been provided with the necessary authority to regulate a substance that causes so many lives to be lost. The Campaign for Tobacco Free Kids, American Heart Association, American Cancer Society, and American Lung Association sponsored the educational campaign piece behind me. As you can see, it features a young child, likely no older than 8 or 9 years old. Yet, children this age are too often the target audience of cartoon-like tobacco advertising that seeks to exploit them as part of a target market for cigarettes. According to the Campaign for Tobacco Free Kids, smoking is the leading cause of preventable deaths, killing approximately 400,000 people each year. The FDA must be provided with the authority to regulate tobacco products to help prevent children from becoming addicted and to make tobacco products less harmful than they are in their current form.

It is estimated that 2,000 children are hooked on tobacco every day. Flavoring cigarettes is one of the tactics used to entice children and teenagers to start smoking. Right here, you can see an example of the marketing that was employed in this campaign. This summer, R.J. Reynolds Tobacco Company produced flavored cigarettes that used 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, is flavored with ''Hawaiian hints of pineapple and coconut.'' I don't know if you can see this, but let me point it out right here. Another lime-flavored cigarette is featured in the same marketing campaign.

I am outraged that a manufacturer of such a deadly product would exploit and, therefore, taint images and names from Hawaii in their attempts to lure children into smoking. It presents a false promise of paradise. The DeWine-Kennedy amendment would have prohibited flavored cigarettes, such as the Kauai Kolada, and restricted tobacco advertising.

Any buyout for tobacco farmers must include FDA regulation. It is outrageous that this current Congress will fail to take necessary and justifiable steps to help protect our children and improve the public health of our country. It appears that certain tobacco companies want to continue to cultivate another generation of smokers so that they can increase their sale and reap more profits at the expense of the health and well-being of our families.

Coming from a State that does not have a large manufacturing base, the bulk of this conference report will not apply. Given that fact, I still find it my duty to help American manufacturers for the good of our country, and I applaud the provisions in this conference report that do so. It is our manufacturers that help us maintain our status as an economic powerhouse in the world.

However, as occurs with other large bills, there are enough things wrong with this final package and enough missed opportunities that I am unable to support it.

I yield back the balance of my time.

The PRESIDING OFFICER. The Senator from Louisiana is recognized.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

The PRESIDING OFFICER (Mr. MCCONNELL). Without objection, it is so ordered.

Mr. TALENT. Mr. President, I rise to speak about a provision in the pending tax bill that will benefit tens of thousands of families, mostly African-American families, a provision based on the Sickle Cell Treatment Act, S. 874, that I introduced last year with my friend and colleague, the Senator from New York, Mr. SCHUMER.

Before I discuss the provision, I thank the leader and also our distinguished majority whip for their hard work in advocating for the inclusion of this provision in the conference report. It is very important legislation. Certainly, it is bipartisan and bicameral legislation, designed to help treat and find a comprehensive cure for sickle-cell disease, a genetic disease that affects primarily, but by no means exclusively, African Americans.

I am very pleased that the provision enjoys the strong support of many prominent children's health groups, African-American groups, union groups, church groups, and medical groups in general.

Why does the bill have such broad-based appeal? Because it would make a real difference in the lives of families who have struggled with this disease, as well as others who are high risk for getting it.

Here are a few statistics about sickle-cell disease: About 1 in 300 newborn African-American infants are born with sickle-cell disease. More than 2,500,000 Americans have the sickle-cell trait. They do not necessarily have the disease but they have the trait and therefore may pass the disease on to their children. Sickle-cell disease is the most common genetic disease that is screened in American newborns. People with the disease have red blood cells that contain abnormal types of hemoglobin and therefore the shape of the cell changes into a sickle-like shape, hence the name of the disease.

Blood cells with that shape have difficulty passing through the blood vessels or carrying the nutrients or oxygen the body needs. Tissue that does not receive a normal blood flow eventually becomes damaged and can cause potentially life-threatening complications.

There are many side effects or complications because of the disease. Stroke is probably the most feared effect of sickle-cell disease, especially for children. It may affect infants as young as 18 months old. The important thing to remember is that sickle cell is a sneaky disease. It can show up in ways one would not normally associate with the disease.

I have spoken, for example, with parents whose kids had periodontal disease that was very difficult to treat because it is treated with antibiotics and the blood does not carry the antibiotics as well to affected areas when the patient has sickle cell.

While some patients live without symptoms for years, many others do not survive infancy or early childhood.

There are often severe episodes of pain for people suffering with the disease.

I became personally involved with the effort because of a doctor from St. Louis—a hero, I may add—Dr. Michael DeBaun, who treats children with sickle-cell disease. When I met him and his patients, I was struck by the hardship the disease places on not only the patients but the families of the patient members as well, and primarily on the children who must receive blood transfusion after transfusion to stay alive.

About one-third of children with sickle-cell disease suffer a stroke before age 18. These children require frequent blood transfusions, sometimes 15 to 25 units a year, in order to prevent subsequent strokes. I think especially of a young man I have come to know in the course of working on this legislation, Isaac Cornell Singleton.

Isaac is about 10 years old. He is from Missouri. He is one of Dr. DeBaun's patients and he attends fifth grade at Gateway Elementary School in St. Louis.

Every 4 weeks Isaac goes for blood transfusions at St. Louis Childrens Hospital with Dr. DeBaun. In fact, he has a permanent port installed in his chest to allow for the transfusions, which is one of the reasons he has to limit playing contact sports like basketball and on the playground with other children. If anyone knows Isaac, they know the limitations on his activity and playing sports is, for him, probably the worst aspect of the disease with which he is afflicted.

Last school year, Isaac missed school for several weeks at a time, including because of three hospitalizations, because he had severe episodes of pain associated with the disease. Sickle cell affects his decisions every day. He takes medication daily. He has to drink a lot of water to lubricate his cells. He is careful not to overexert himself, and he gets plenty of rest.

After spending time with Dr. DeBaun in his clinic and after consulting with him about how Medicaid deals with sickle cell, I knew we could make the system better for kids such as Isaac. So last April Senator SCHUMER and I introduced the Sickle Cell Treatment Act. Our friends and colleagues, Congressman DANNY KAY DAVIS from Chicago and Congressman RICHARD BURR from North Carolina, introduced the companion bill in the House.

I cannot overemphasize the outpouring of support we have received for this bill. I knew this disease had affected communities of people for decades, but I had no idea how deep the impact was or how great the need was people felt for help in trying to struggle with this disease. In fact, one of the problems is there has been so little visibility with regard to sickle cell, so little attention paid to it, that there is a lot of ignorance even within the African-American community about what the disease does and how to deal with it.

I think one of the greatest aspects of the bill so far has been to raise the level of attention to the disease. I think that already has helped and the legislation itself will help in informing people. I will go into that in a minute.

As an example of the kind of communications I received, Allyce Renee Ford of Blue Springs, MO, wrote, and I am paraphrasing her a little:

> I was so pleased to read of your bill to increase Federal funding for treatment of sickle cell disease. My twin sons were born with sickle cell in 1973. They suffered with this debilitating disease for all of their lives. They both lost the battle to painful complications of sickle cell related problems in 2002.
>
> Please believe me, Senator Talent, it is a very painful, life constricting disease, both for the victim and for their families.
>
> Even though I do not have any other children to lose to this disease, I mourn for all the other parents who will lose their children in the future . . . today, tomorrow, some day, they will lose them.
>
> Thank God there will be some help for sickle cell disease victims.

Why are so many people, so many groups, so many medical personnel supporting this bill? Because it is critical to help the historically underserved population, many of whom may not know they carry the trait or have the disease until it has already affected them.

The underlying legislation has the support of dozens of African-American children's groups, health advocates, as well as union and church groups. I am not going to read the whole list but it includes the Congressional Black Caucus and the Sickle Cell Disease Association of America—I thank the Sickle Cell Disease Association for their tremendous help in writing this bill and getting it passed—the American Medical Association, the Catholic Health Association, the National Association of Childrens Hospitals, the National Baptist USA, the NAACP, and many other groups as well.

These advocates know this legislation will make a difference in the lives of sickle-cell-disease children and their families in four key ways. First, the bill increases access to affordable quality health care. The provision that is in this tax bill provides funding to currently eligible Medicaid recipients for physician and laboratory services targeted to sickle-cell disease that either are currently not reimbursed or are underreimbursed by Medicaid. The bill enhances services available to sickle-cell patients. A provision in the bill allows States to receive a Federal 50/50 funding match for nonmedical expenses related to sickle-cell treatments such

as genetic counseling, community outreach, education, and other services. This is crucial because right now to get compensated for counseling, education, or outreach regarding sickle cell, the services have to be provided by the physician.

Unfortunately, there are not very many physicians in this field. They are extremely busy. They do not have the time to sit down and do this kind of counseling with the patients. Many of them heroically make the time, but there are limits to the number of hours they have in the day. So if this counseling can be provided by nonphysicians, other personnel who are thoroughly familiar with the disease in various outreach centers and places, we can reach out and let people know what this disease is, whether they should get screened for it, what the symptoms are, how they can manage their diet and their lives so as to minimize complications, and many other things that are crucial.

This disease management provision allows hospitals and clinics to do outreach with nonmedical personnel to educate high-risk communities about the disease. It also allows nonmedical personnel like counselors to spend time with sickle cell families and spend time discussing how to manage the disease. In particular, I have talked with parents who have this problem. This will help experts in this field assist families in navigating through the health care maze so they can get the services they need.

The bill also creates 40 sickle cell disease treatment centers around the country. It authorizes the Department of Health and Human Services to distribute grants for up to 40 health centers nationwide at a cost of about $50 million for the next 5 fiscal years so we can have outreach centers in all parts of the country where there are substantial concentrations of people who are at high risk for the disease. It could mean a health center grant in almost every State. The grant money could be used for purposes including education, treatment, continuity of care for sickle cell disease patients, and for training health professionals.

Finally, the bill establishes a sickle cell disease research headquarters. It creates a national coordinating center which will also be operated by the Department of Health and Human Services to coordinate and oversee sickle cell disease funding and research conducted at hospitals, universities, and community-based organizations.

This will focus on efficiency so we can share information about the disease and about outcomes around the country, and accountability to make sure taxpayer dollars are being spent properly in funding good research on sickle cell disease.

Taken together, the components of this bill will make a real and tangible difference in the lives of thousands of American families. I hope this bill is a first step. We have once again Senator SCHUMER and I and Congressman DAVIS and Congressman BURR and all those who have helped us with this, and we ended up with more than a majority of the Senate sponsoring this bill, divided almost evenly between both sides of the aisle.

We look on this as a first step. This bill is going to begin laying the infrastructure for outreach centers, for advocates, for counselors around the country to help families who are struggling with this disease, and to lay the basis for the next step—whether it is additional funding for research or helping people who are coping with the disease so these families and these patients who are struggling with sickle cell disease know they are not alone.

It is one of the more important things Congress has done this year. I can tell you based on my personal experience that it will encourage the many thousands of people around the country who have felt so alone as they struggle with sickle cell disease.

Today, we have truly done something for the public good in including this in the conference report. I am hopeful at some point we will have a chance to vote on it, and I am confident we will pass it.

Mr. President, I thank you for your personal assistance, and I thank the Senate for indulging me in these comments.

I yield the floor.

The PRESIDING OFFICER. The Senator from Louisiana.

Ms. LANDRIEU. Mr. President, I ask unanimous consent to speak for up to 30 minutes as in morning business.

Mr. TALENT. I object.

The PRESIDING OFFICER. Objection is heard.

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

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

The assistant legislative clerk proceeded to call the roll.

Ms. LANDRIEU. Mr. President, I ask unanimous consent that the order for the quorum call be dispensed with.

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

Ms. LANDRIEU. Mr. President, I ask unanimous consent to speak in morning business for up to 30 minutes.

The PRESIDING OFFICER. In my capacity as a Senator from Missouri, I have to object.

Ms. LANDRIEU. There are no other Senators wanting to speak.

The PRESIDING OFFICER. That is correct.

Objection is heard.

Ms. LANDRIEU. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

The PRESIDING OFFICER (Mr. ROBERTS). Is there objection?

Without objection, it is so ordered.

The Senator is recognized.

Ms. LANDRIEU. Thank you, Mr. President.

I ask unanimous consent to speak for 30 minutes as in morning business.

The PRESIDING OFFICER. Acting in my role as an independent Senator from the State of Kansas, I must object.

Ms. LANDRIEU. Thank you, Mr. President. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

The PRESIDING OFFICER. Is there objection?

Ms. LANDRIEU. Mr. President, reserving right to object, I just ask the leader——

The PRESIDING OFFICER. The Senator cannot reserve the right to object.

Ms. LANDRIEU. I object.

The PRESIDING OFFICER. Objection is heard. The clerk will continue the call of the roll.

The assistant legislative clerk continued with the call of the roll.

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

The PRESIDING OFFICER. Is there objection?

Ms. LANDRIEU. No objection.

The PRESIDING OFFICER. The distinguished majority leader.

THE 108TH CONGRESS

Mr. FRIST. Mr. President, over the next few minutes I would like to take a pause—in the sense that we have a lot going on as we finish much of the work of the 108th Congress—and sort of look back as to what we have faced and what we, indeed, have accomplished over this period of the 108th Congress.

I want to thank my colleagues for their tremendous hard work over the past 2 years. People have shown dedication to the people's business, and indeed we have made real progress with regard to the Nation's business. It is an honor to serve in this body alongside such talented men and women.

The events of 9/11 changed all of our lives. It transformed the world, and a transformed world cried out for reform. And reform this Congress has delivered. One often hears the word ''historic'' to describe legislative achievements. In some cases, it is true. In the case of the 108th Congress, it is no understatement to say we have made truly historic progress for the American people. During the 108th Congress, the Senate passed sweeping reforms of not one but two major programs that ultimately affect every American's life.

We passed the most far-reaching reforms of Medicare, our second largest entitlement program, since its inception almost 40 years ago. This week, we passed the most comprehensive reforms

of the intelligence community in 50 years. We were able to do all of this while also enacting in this Nation's history the third largest tax relief package for hard-working women and men.

Now, because of the President's jobs and growth package, the economy has generated nearly 1.9 million jobs since April 2003. Every month for the past 13 months, we have seen job gains. The unemployment rate has hit historic lows—lower than the average of the 1970s, 1980s, and 1990s. Home ownership is at an alltime high. America's standard of living is on the rise. Our economy is strong and growing.

I want to underscore that passing one major reform bill in a congressional period is remarkable; passing two makes this Congress truly unique. In both cases, efforts at reform had been stymied for decades. In this Congress, we finally broke through. For the first time in its 40-year history, Medicare will offer voluntary, comprehensive coverage for lifesaving prescription drugs. Until we acted, seniors were denied coverage under Medicare for outpatient prescription drugs, the most powerful tools in the arsenal of modern medicine to prevent illness and to fight disease. Because we acted, over 40 million seniors and individuals with disabilities will soon enjoy true health security. This worthy program, because of our actions, will finally be able to keep pace with modern medicine.

In the nearly four decades since Medicare was created, the American medical system has transformed from one focus on treating episodic, acute illnesses in hospitals to one characterized by increasing emphasis on managing and preventing chronic disease. In contrast to long hospital stays, patients are increasingly treated in outpatient settings with advanced medical technologies and prescription drugs. Our medical and scientific knowledge, along with it our ability to treat illness and disease, have improved dramatically over the past four decades, and now, because of our reforms, Medicare will be able to keep up.

All seniors will have the opportunity to get prescription drug coverage and improved benefits. Already real help is in place. Over 4 million seniors are getting substantial savings right now. Over 100,000 people every week are signing up for the new prescription drug cards. Through this new Medicare prescription drug discount program, seniors are saving, right now, an average of 10, 15, 20, 25, or even 30 percent off of the cost of their prescription drugs. Millions of low-income seniors, in addition to that 25-percent discount, get $1,200 over the next 15 months in prescription drugs.

On Tuesday, my staff and I will spread across Tennessee to engage in a six-city effort to enroll eligible seniors in the prescription drug discount card. Our focus, in particular, will be to enroll as many low-income Tennessee seniors as possible in this new savings program. We will be partnering with local public health officials, doctors, hospitals, and patient advocacy groups to help register patients, to help seniors who need the help the most get those prescription drug cards. I encourage seniors who might be listening as I speak to call that number, 1–800–MEDICARE, right now to obtain your drug card and get immediate discounts on your medicines.

I am deeply grateful for the cooperation and hard work and dedication of my colleagues to overcome years of partisan gridlock and finally offer America's seniors the security they need and the choices they deserve through the Medicare Program. There is much more to do, but all of this is a strong start.

The Medicare law created health savings accounts. These health savings accounts allow Americans to have more control over their health decisions, over their health care choices, and over their hard-earned dollars. Tax deductible health savings accounts put patients and consumers in charge of their own health care. They own it. They own their health care. They own their accounts. They control these accounts. They invest it. They can take it from job to job. It is portable, wherever they might go. In these health savings accounts, you have choice, you have that freedom of choice. You choose your doctor, you choose your hospital, and you choose your health care plan. And this reform, again, had alluded us for years and years, but the 108th Congress delivered.

I am proud of President Bush's leadership on health savings accounts and Medicare. I am proud of our health care accomplishments in this body, and I am proud that these accomplishments provide a strong platform for the next steps to making health care more affordable, more available, and more dependable for all Americans.

In addition to passing major reform of Medicare in the 108th, we undertook the urgent task of reforming our Nation's intelligence community. We delivered. The reforms we passed through the executive branch are the most comprehensive and the most far-reaching and sweeping since the National Security Act of 1947. Under the leadership of President Bush, we have worked to meet the greatest challenge of our time: fighting the war on terror.

I commend the President for his bold and steady leadership and his commitment to making America safe. After the 9/11 attacks, he recognized immediately that we were at war. The President made tough decisions. He made the right decisions. Every day, he is following through on those decisions to use the full range of our resources to combat the enemy, to find them where they live and to defeat them. In the 3 years since the 9/11 attack, we have learned much about our Nation's vulnerabilities, about our strengths, and the steps we must take to protect ourselves.

In July, the Democratic leader and I set the process in motion for the Senate to respond legislatively to the 9/11 Commission Report on our intelligence community. The report identified a number of serious failings that required immediate action. We asked the Governmental Affairs Committee, in close consultation with the other relevant committees, to carefully evaluate the Commission's proposals regarding reorganization of the executive branch and determine how best to accomplish those reforms.

Over the August recess, the committee held two dozen hearings, and the Senate committees heard testimony from multiple witnesses. We had hearings in the Governmental Affairs Committee, the Intelligence Committee, the Commerce Committee, and the Armed Services Committee. Each carefully examined the recommendations of the 9/11 Commission's report. That work came to fruition this past Wednesday night in a historic, near unanimous vote to overhaul the intelligence community. The Senate voted 96 to 2, with 2 Senators absent, to coordinate the efforts of our 15 military and civilian intelligence agencies.

Critically, this legislation seeks to establish a new national intelligence director to set and carry out intelligence priorities. It also calls for the creation of the National counterterrorism Center and National Counterproliferation Center to improve our ability to gather, coordinate, and analyze the intelligence data.

We know the intelligence community generates massive amounts of information. In the aftermath of 9/11, this point became tragically clear. There had been clues, there had been arrests, analyses, and warnings, but these pieces of information were scattered across the agencies; they were not properly shared. They became missed opportunities.

This legislation will reform the system from one that focused on a need to know to one focused on a need to share.

Also in the bill are initiatives to strengthen our safeguards at home, including national standards for issuance of drivers licenses, ramped-up no-fly and other terrorist watchlists, and improved screening at ports and borders. We have seen over and over again that the enemy is willing to commit any barbarity to achieve its twisted aims. The enemy is capable of shooting toddlers, of lacing a schoolhouse with bombs, beheading innocent hostages and, as we all saw on 9/11, rejoices in the devastation of these attacks.

The steps we are now taking to strengthen our intelligence community and homeland security will help America defeat the enemy and make America safer and more secure. Strengthening America at home and abroad, moving America forward in pursuit of freedom and prosperity, these have been the driving motivations of the 108th Congress.

When the 108th Congress began, we faced some enormous challenges. First,

the previous Democrat-led Congress had failed to pass a budget, so we got to work immediately passing 12 of the 13 spending bills left undone by the previous Congress. We passed 11 of those bills in only 3 weeks. We also passed a budget to establish a blueprint for creating jobs, investing in homeland security, investing in education, providing Medicare prescription drug coverage, and offering health insurance for America's children.

With that unfinished business of the last Congress complete, we turned our attention to the President's jobs and growth agenda. Under the President's leadership, we passed $350 billion in tax relief, the third largest tax cut in history. We cut taxes across the board for 136 million hard-working Americans. For America's families we increased the child tax credit from $600 per child to $1,000 per child and we made sure those rebate checks were sent out immediately. Last year we returned $13.7 billion in taxes to families across the country, and we cut these taxes because we believe taxes are the people's money, not the Government's money. We think Americans pay simply too much. Our goal was to put more money back into the pockets of hard-working Americans for them to save, to invest, and to spend.

Small business owners got a major boost from the tax package. Twenty-three million small business owners who pay taxes at the individual rate saw their taxes fall. We quadrupled the expense deduction for small business investment to spur growth and development.

Small business owners are the engine of the American marketplace. These innovators create 60 to 80 percent of new jobs nationwide and they generate more than 50 percent of the gross domestic product. By cutting taxes and encouraging investment, we help to unleash their tremendous economic power.

Taken together, the 2001 and 2003 tax cuts are providing an astonishing $1.7 trillion in tax relief over the next decade. We acted and we are seeing the results.

In the midst of the fastest economic growth since Ronald Reagan was President, consumers have more money in their pockets and businesses are optimistic about the direction of the economy. In more good news, the national home ownership rate has hit all-time highs. Minority home ownership, too, is setting new records. This is great for families, and it is great for the economy.

When a family buys a home, it not only benefits the community, but it sets off a whole chain of purchases that help fuel the economy. Folks buy living room furniture, bedding, kitchen appliances, curtains, washers and dryers. Homeowners have a greater stake in their communities, in how they live and in how those around them live, and building equity across lines opens doors to broader financial opportunities.

We believe in the American dream, and we believe the American dream should be accessible to all Americans. That is why in this Congress we passed the American Dream Downpayment Act. This particular act provides $200 million a year in downpayment assistance for low-income, first-time home buyers. It also increases the value of loans which the Federal Housing Administration may guarantee in disadvantaged areas.

We are committed to helping the American family achieve their aspirations, and home ownership is an integral part of achieving the American dream.

Meanwhile, this month we voted to extend key parts of the President's tax relief plan for middle-class families. We extended the marriage penalty tax relief. We extended the full $1,000 per child tax credit through the year 2010. We made sure low-income Americans will continue to benefit from the 10-percent tax bracket, and we also made strides in simplifying the Tax Code. This is all just the beginning.

In the next Congress, we will be looking at fundamental tax reform, including major simplification of the Tax Code and making tax cuts permanent. This will save families time. It will save them money. It will save them stress. We are determined to make the tax system more straightforward so families can count on keeping more of their tax dollars for years to come.

We are committed to a strong, profamily agenda. It is reflected in our home ownership plan and our tax relief plan. It is also reflected in our legislation to protect the family and its most vulnerable members.

In the 108th Congress, we passed the partial-birth abortion ban, which the President signed into law. We also passed the Unborn Victims of Violence Act, the Laci and Conner Peterson law. We passed the PROTECT Act to strengthen laws against child pornography. This law also expands the President's initiative to provide national coordination for the AMBER Alert.

Yesterday, we passed landmark legislation under the leadership of Chairman HATCH that expanded the rights of crime victims. It helps clear the backlog of more than 300,000 rape cases and other crime scene evidence awaiting analysis, and expands access to DNA testing for rape victims and prison inmates.

We authorized the child nutrition and school lunch programs in the last Congress so kids can get healthy meals at school, particularly children from economically disadvantaged families.

In an act of true vision and compassion, we passed a historic school voucher plan for students right in the Nation's capital. The DC Choice Program is the first school choice program to receive Federal dollars. The DC school system is receiving 40 million new dollars to launch this program. DC schools were in crisis. Mayor Anthony Williams came to this Senate floor, the first time a mayor had been on the Senate floor in a quarter of a century, to ask specifically of this body for help. We responded and we acted for the service and to the service of DC schoolchildren. There was a bitter debate and some tried to block this progress. Some argued vociferously to maintain the status quo and to not change, but in the end the District of Columbia schoolchildren won out. Principle trumped politics, and today DC's kids are climbing the first rungs of the academic ladder.

In this Congress, we extended unemployment benefits and welfare reform to help families through tough times and challenging transitions. We believe the proper role of Government is to protect the safety and well-being of families, give them the tools they need to meet their responsibilities and to move their families forward. We believe hard work should be rewarded and we worked hard in this 108th Congress to help America's families succeed.

The 108th Congress saw big reforms and bold action on the domestic front. We also saw major action on foreign policy, starting with Operation Iraqi Freedom. In the spring of 2003, America, under the leadership of President Bush, took the extraordinary action of toppling Saddam Hussein and his terrorist-sponsoring regime. In 3 short weeks, the men and women of the U.S. military, with the support of 49 nations, swept into Baghdad, ending three decades of ruthless Baath Party rule.

In the months since, our soldiers have worked tirelessly under dangerous conditions to help the Iraqi people build a democracy. Our soldiers have rebuilt schools, hospitals, electrical grids, pipelines, and roads. They are training Iraqi police forces to patrol the streets and hunt down terrorists. Every day our troops are helping the people of Iraq and Afghanistan move toward becoming free and open societies. Afghanistan had its first Presidential election in history just yesterday, without incidents. And that is democracy.

To support our military efforts, we passed the President's $87 billion for reconstruction and equipment for our troops. America's security depends on fully supporting our Nation's defense. The appropriations bill for 2005 grants the Defense Department over $416 billion in new spending authority to keep America safe. Military personnel will also receive a 3.5-percent pay raise.

We are taking the battle to the enemy, but we must remain vigilant at home. That is why we passed the Homeland Security appropriations bill and added $1.6 billion in funding for increased security, enforcement, and investigations.

This spring the Senate also passed, and the President signed into law, Project Bioshield. This far-reaching legislation will improve our ability to develop cutting-edge countermeasures

against biological and chemical and radiological threats, those 21st century weapons of mass destruction.

We also passed the Law Enforcement Officer Safety Act. This new law will allow current and retired police officers to carry a concealed weapon in any of the 50 States. America will now have throughout the added security of tens of thousands of trained and certified law enforcement officers serving and protecting us all across the country and even into their retirement.

These precautions are absolutely crucial to the security of our country, but, as the President has said, ultimately our greatest defense against terror is the spread of democracy.

In the 108th Congress, we have worked to promote freedom around the world. In this session, we passed the Burmese Freedom Act and the Clean Diamond Act to promote peace and freedom around the world.

We also took that historic action of dedicating $15 billion to drive back that HIV/AIDS virus, arguably one of the most moral, humanitarian, and public health challenges of our time. As a Senator and as a doctor and as one who participates frequently on medical mission trips, I am especially gratified by the Senate's demonstration of compassion on this issue to fight the HIV/AIDS virus, both here at home and around the world. Our work in passing this critical legislation demonstrates we are a country that, indeed, places a high value on life. History will judge how we chose to respond. We can proudly say that, under President Bush's leadership, we made the right choice and took the necessary actions to put an end to one of the worst plagues in recorded history. But our work against this virus has just begun.

Free trade is another way we project our values and promote freedom and democracy around the world. We passed, and the President signed, the African Growth and Opportunity Act. Not only has this legislation created new investment opportunities for American businesses, but it has helped create 150,000 new African jobs. It has helped pump more than $340 million into African economies. It has helped forge a place for Africa in the global trade market. A stable and growing Africa is in everyone's interest.

In addition, this Congress passed the Morocco and Australia Free Trade Agreement, which will open markets for U.S. goods and create jobs for American workers.

We made great strides in the 108th Congress, but there have also been disappointments, the biggest of them being the unprecedented obstruction of the President's judicial nominees. A partisan minority is attempting to change 225 years of congressional history and undermine the constitutional process. They are subverting the clear meaning of the Constitution and preventing the Senate from carrying out its basic duty, to give advice and consent under the Constitution. Advice and consent for the Senate simply means an up-or-down vote on the President's judicial nominees, and that has been denied.

Prior to this Congress, with the exception of Abe Fortas, who did not have majority support and withdrew his own nomination, no judicial nominee brought to the floor failed to get an up-or-down vote as a result of a filibuster. Two centuries of precedent upheld the separation of powers and protected the constitutional process. During the 108th Congress, however, we have seen precedent replaced with partisanship and respect for the separation of powers tossed aside. In this Congress, the other side has filibustered not 1 but 10 of the President's judicial nominees. Janice Rogers Brown, Richard Griffin—filibustered; Carolyn Kuhl—filibustered; David McKeague—filibustered; William Meyers—filibustered; Priscilla Owen—filibustered; Charles Pickering—filibustered; William Pryor—filibustered; Henry Saad—filibustered; Miguel Estrada—who, by the way, finally withdrew his nomination after more than 2 years of partisan wrangling and seven cloture votes—filibustered.

All 10 of these honorable, hard-working people enjoyed the support of a bipartisan majority in the Senate and would have been confirmed if allowed a simple up-or-down vote. But they were denied this basic right. That cannot be tolerated.

In total, the President has nominated 34 circuit court nominees, nearly a third, 1 out of 3, have been denied on this floor a simple up-or-down vote. They didn't all have to be approved. They didn't have to get an ''up'' vote or a yes vote, but they have been denied the opportunity of even having that vote. That is wrong.

In addition to blocking these nominations, the other side has engaged in an unprecedented campaign to obstruct dozens and dozens of nominations to our Federal agencies. We are talking about noncontroversial agencies such as the Coast Guard or Amtrak or the Harry S Truman Scholarship Foundation. These nominations are being obstructed.

What should be a smooth, bipartisan process has become politicized and caught in these jaws of obstruction. It is unprecedented and unfair to the men and women who are caught in limbo. These individuals, all of whom are willing to put themselves up for public service, are being denied that opportunity to serve. These individuals deserve fair and timely consideration. In the next Congress, we will keep pressing to end the obstruction. All we ask for is simple fairness.

Today, as we have seen over the course of the day here on a Sunday almost evening—it is 6 o'clock, historical in the sense that we very rarely meet on Sunday and very rarely vote on Sunday, but here we are, today, once again being filibustered, being obstructed. Today it is on legislation important to 290 million Americans. Everyone listening to me has a vested interest in the legislation that is being filibustered, obstructed on the floor of the Senate. We wouldn't have been here all day yesterday, or be here today or tomorrow, if this legislation weren't critical to Americans. Yet we have the other side saying, No; delay; filibuster. Obstruction—more of the same.

What is interesting to me is the issues that are being filibustered today, on this Sunday and Saturday and over the last several days, are issues such as homeland security. We are talking about money being invested in our communities to secure our safety being filibustered and blocked on the floor of the Senate. We are talking about disaster assistance, whether it is for droughts, which are occurring throughout the West and areas of the South—that money, it is here. It is ready to flow now, but it is being obstructed on the floor of the Senate by the other side.

We saw the devastating hurricanes. Many of us have been to Florida and seen the wrath which these hurricanes have created. And right now that money is being stopped on the Senate floor because of filibuster and obstruction by the Democrats.

On the military construction bill, which is critically important to the country, we are ready to move. We were ready to move yesterday—or today and as soon as possible. Yet it is being blocked for no reason we can see. That has nothing to do with drought, or homeland security, or hurricane relief, but military construction. We see the delay and we see the obstruction.

We have seen obstruction in this country in the area of lawsuits and on lawsuit abuse reform, something we have attempted again and again. Time and time again, the other side has blocked consideration of things such as medical liability reform and class action reform, despite the fact it has been made clear—at least it has on this floor—that out-of-control litigation is costing this country dearly, not only in health care but in class action. We see it in asbestos; we see it where broad reform of our tort system is being cried out for. Countless jobs are being destroyed, companies are going bankrupt, and doctors in my own profession are fleeing the profession because of the out-of-control litigation and the frivolous lawsuits.

In the field of class action lawsuits, we have seen the number of the class action lawsuits explode. State court class action filings have skyrocketed. They have increased by 1,300 percent in 10 years. The result of this glut of claims is to clog the State courts, to inject inefficiencies and waste into the system, to clearly waste taxpayer dollars, and ultimately inhibit the innovation and the entrepreneurship which is so crucial to job growth. Money is wasted. The cost of all consumer goods with these class action lawsuits goes

up. It touches everybody. Every consumer ends up paying the price. When it comes to medical liability and frivolous lawsuits, it pushes everyone's premiums higher and higher needlessly because of the waste.

I receive letters from doctors all over America, in part because I am a doctor, I guess. But as I go around and do town meetings and travel around the country, this problem has surfaced to be one of the major problems facing our health care system today and indirectly our economy as the cost of these premiums which people are having to pay goes up and up.

I think people understand the medical liability crisis. It is real, it is spreading, and it is increasing. Thus, we have the responsibility on this floor to act. Yet, three times over the past Congress we have attempted to bring medical liability reform to the Senate, but we were obstructed in each and every case.

The medical liability challenge and the lawsuit abuse as it applies to the medical field is having a direct impact not only on costs but now on the availability of health care. It drives doctors out of the practice of medicine. It is sending a signal to the next generation of potential physicians that I am not going to be going into that field given the obstruction it is causing to the profession. It is not only a matter of cost, but now people are realizing it hurts quality of care and access to care. It is threatening the fundamentals of our health care system at the same time it is costing this country billions of dollars.

As you travel around the country, women are telling us again and again they are losing their obstetrician who, because of the skyrocketing cost of premiums, is having to stop delivering babies. They may continue in medicine, but maybe not continue in medicine. Pregnant women have to switch to another obstetrician. Women living in the country are having a hard time finding obstetricians because they have stopped delivering babies.

Trauma centers are threatening to close down. And still, three times trying to bring reform to this body or trying to bring a bill that engages medical liability reform, we have been thwarted.

If you look at the cost, the numbers are always hard to calculate specifically. But if you put the well-researched reports together, they predict that if we reform the medical liability system with commonsense reform, we will save the economy $70 billion to $126 billion per year. If you look at the Federal Government alone, savings would be approximately $14.9 billion over 10 years, if you only look at savings in Medicare and Medicaid.

What that means is if we had appropriate reform, that $70 billion to $126 billion—which everyone is paying because that is what forces in part the cost of health care to go up—would be saved, and with that premiums could come down and the rate of growth costs would diminish over time. This is wasted money. It does absolutely nothing in that doctor-patient interaction to improve health care of the patient. It is totally wasted money. But at the same time, it makes the cost of all of our premiums—everybody listening to me—it makes their premiums go up, up, up, waste, abuse of the system. I would say it is almost fraud within the system that can be eliminated to lower your health care costs.

When it comes to out-of-control litigation, another field that is important for us to address, asbestos litigation, the torrent of litigation in this field is wreaking havoc on victims and jobs, and all of that gets reflected into devastation in sectors of our economy. The approximately 600,000 claims that have been filed have already cost $54 billion in settlements and judgments and litigation costs. The current asbestos tort system has become almost nothing more than a litigation lottery.

I say that because some of the people with mesothelioma of the lungs, or lung cancer, are receiving adequate compensation but with a huge delay. But money is not going only to those who deserve it, it is once again being wasted on far more people than the few who are getting the money who deserve it. There are many more who are suffering long delays of unpredictable compensation, of inequitable awards, if they are lucky enough to receive anything at all.

The only real winner in this whole asbestos system, I think, are the plaintiffs' trial lawyers. They take anywhere from 30 percent, 40 percent, sometimes 50 percent of every dollar that should be going to the victims, the patient, the person who might get cancer, the person who has cancer because of this asbestos fiber. That is where the money should be going. And yet, 30, 40, 50 of these billions of dollars are going into the pockets of the trial lawyers. While they collect their fees, at the same time asbestos-related bankruptcies have already led to more than 60,000 Americans losing their jobs. As you can see, this asbestos litigation lottery must be fixed.

Also costing Americans jobs and money are rising energy prices. This week we saw in the news that oil prices have hit $52 a barrel. Winter heating costs are expected to rise as a result, and it is critical that we have in response to this need an energy plan so vital to America's families who are facing higher bills because of delay. It is vital to our national security which is threatened by this overdependence on foreign oil.

Again, the Energy bill was filibustered and blocked on the Senate floor.

By passing the Energy bill, not only will we lower energy costs but we will save jobs and create thousands more. It is estimated that the Energy bill will create at least a half million jobs.

Reforming the litigation system and passing the comprehensive energy plan will lower consumer costs. It will stimulate the economy. It will create jobs. It will improve our health care system and it will grow the economy.

I urge my colleagues to set aside obstruction tactics and help America move forward.

When we return in the 109th we will clearly have a full agenda, from strengthening the safety net to helping Americans secure their future. We will have a number of major themes emerge in the 109th Congress. We will continue to bring programs up to date through today's challenges and to face those challenges. We will continue to press for reforms and grow the economy, reforms that will create jobs, and we will continue to support the creativity, ingenuity, and productivity of the American people who are, after all, what make this country great.

I am sure we will have an opportunity to talk more in the coming days, or hopefully coming hours if we are not here too long, to look back over the last 2 years of this Congress. It has been a pleasure to be able to help move America forward by advancing the agenda that we set out initially with many accomplishments of which we can all be proud.

I yield the floor.

The PRESIDING OFFICER. The minority leader is recognized.

Mr. DASCHLE. Mr. President, I had not intended to come to the Senate to respond to the distinguished majority leader, but I feel compelled to do so.

He had mentioned the disagreements that are currently pending with regard to completion of our work on Homeland Security and the Military Construction bill, the so-called FSC bill, and I think my response to his lament, publicly, is to say that really is the metaphor for the whole Congress. Our situation today involving these particular bills is no different than the situation we faced on so many other pieces of incomplete action. In those instances when we have been able to work together, legislation has passed. That is the essence of good legislative achievement, coming together, finding common ground, resolving the differences, and enacting the law.

But on so many pieces of legislation, in spite of the fact we would move in a bipartisan way, with overwhelming votes in the Senate, we get to conference, and for various reasons—in large measure because of the Republican leadership in the House—those bills that passed with overwhelming bipartisan consensus in the Senate were made impossible to pass once they got through conference.

That is true of the highway bill. It is true of the energy bill. It has been true of countless legislative experiences over the last 2 years.

That is in essence why we find ourselves here today. I am confident, in fact, we are very close, perhaps, to reaching an agreement that will break the impasse on the pending bills.

I understand completely the anger, the frustration expressed by both my

colleagues, Senator LANDRIEU and Senator HARKIN, when the conferees took the actions they have to make it as unfair to segments of our society that they believe very strongly ought to be defended.

In Senator HARKIN's case, it is the double standard we are forcing farmers and ranchers to endure as a result of a decision made by the conferees to make farmers take the very assistance they are going to get for disaster out of their other pocket.

Many have talked about this already, and I don't think it needs elaboration, but that double standard, that unfairness, simply cannot go without an objection. In the case of the distinguished Senator from Louisiana, her concern, rightly so, has been fair tax treatment for members of the National Guard.

If we can find ways with which to address the marriage penalties—and we should and did—find ways to address the childcare tax credit—we should and we did—her view is that those brave fighting men and women in Iraq today ought to have the same consideration, the same appreciation for a recognition of their sacrifice. It is not enough to simply say ''thank you.'' We ought to find a way to say ''thank you'' with more meaning. That is all she is suggesting.

On those two issues, even though I am increasingly optimistic we may be able to break this impasse, it could have been avoided if simple fairness would have been reflected as we face our responsibilities in the conference committee.

As to other issues involving our Senate experience over these last 2 years, the distinguished majority leader again went back to the frequent criticism, unfair criticism, of the way judges have been handled in this Congress. I have to say, for the life of me, I cannot understand how anyone could not be satisfied with a 95-percent success rate.

Mr. President, 201 judges have been confirmed. That is more than in the Bush 1 administration in the early 1990s; more than in the Reagan administration in their first term in the 1980s; it is more, by far, than the Clinton administration in the second term when the Republicans controlled the Senate. Ninety-five percent.

In baseball, in almost any other walk of life, 95 percent is an A. Yet we hear the constant criticisms and totally erroneous assertions that this has never been done before. It has been done on many occasions before. Most troubling is it was done during the Clinton administration prior to the time their nominees even came to the floor. We had over 65 judges who never even got a vote in the committee. Every single one of these judges got a vote. In some cases, it was a cloture vote. In some cases it was up or down, but it was a vote in the Senate. That is a lot more judges than the previous experience in the Clinton administration.

The majority leader mentioned the liability reform matter, and we can debate that over and over. I have said from the beginning and continue to believe that federalization of our tort system does not make sense, but there are ways with which to address improvements and changes in the way the system works. We all oppose frivolous lawsuits, and we ought to get rid of them and find ways in which to address that. Instead of working with us, instead of finding common ground, their insistence was, ''our way or the highway.'' They lay a bill down, fill up the tree, and say: You either vote for it or against it, but you will have no choice.

Regarding the majority leader's assertion that this is somehow going to control costs in health care, virtually every single objective analysis has said the limits they are proposing would mean less than one-half of 1 percent reduction in health costs overall. We all recognize there are serious issues involving malpractice insurance premiums we have to address. We want to do that. We have ways with which to do that, including reinsurance, including tax credits and tax relief for those who are paying those premiums, including dealing with medical reviews and finding ways to bring down the costs. But, again, our colleagues on the other side simply refused to work with us to make that happen.

There are also many illustrations of their lack of ability to accomplish a legislative agenda in large measure because of huge disagreements on their side. Their lack of ability to address the budget was a disagreement on their side having to do with taxes and appropriations. Their inability to pass appropriations was because of disagreement on their side because of that budget problem. Their inability to deal with energy and transportation and reimportation, in large measure, was as a result of disagreements on their side.

The Energy bill is another classic example, as I said a moment ago, of putting the Senate in a position where failure was the only option because of their insistence—their insistence—on special interest provisions that the Republicans opposed.

So there is a lot to be said about the ongoing debate about achievements and about obstruction, about the lack of ability to find common ground. But, again, I go back to examples where it has happened.

As the majority leader noted, he and I reached an agreement in July on how to deal with the reaction and legislative response to the 9/11 Commission recommendations. We delegated the Governmental Affairs Committee with the responsibility, and it worked. We established a task force to ensure we have a legislative reorganizational response, and it worked, thanks in part to the effort of our distinguished assistant Republican and Democratic leaders.

So we can work together. We have demonstrated that. My only disappointment is that on so many occasions, when we could have found common ground, the majority chose to take the political course. It is for that reason, and only for that reason, we have not been a more accomplished Congress in the 108th.

There is still time to address a number of issues: asbestos, energy, mental health parity—again, a commitment made by the Republican leader, by others, that we would take up this legislation and pass it. That has not happened, in large part, almost exclusively, because of disagreements, again, on the Republican side.

So there is still hope we can reach some common ground. I hope that will be the case.

I yield additional time to the Senator from Louisiana.

Ms. LANDRIEU. I thank the leader.

The PRESIDING OFFICER (Mr. DEWINE). The Chair will inquire, how much time is the Senator yielding?

Mr. DASCHLE. I yield the distinguished Senator from Louisiana an additional 15 minutes.

The PRESIDING OFFICER. The Senator is yielded an additional 15 minutes.

The Senator from Louisiana.

Ms. LANDRIEU. Mr. President, I thank the leader, Senator DASCHLE, for his comments and for the respectful way in which he has addressed the situation we find ourselves in now, because the Members of this body have been working very hard the last couple of days on very important matters. As you know, each and every one of these matters is extremely important to our constituents from our own States, but some of these matters transcend our own States and our districts. Some of these matters transcend individual industries.

Actually, the matter that is before the Senate, and the main reason for the filibuster—or one of the reasons; there are two or three—but the one I have been coming to the floor and speaking about, with several of my colleagues, is the fact we are in the process of passing a bill—if I can pick it up; it is quite heavy—a bill with about 600 pages in it of tax cuts, $137 billion that includes almost every industry you can imagine, large and small, in every part of the country, but the one group of people that is not in here, even if you read from the first page to the last, and even the small print, the one group of people who you will not find in this bill is the 643,000 men and women of the Guard and Reserve and the families they represent. There is not one sentence of tax relief for them.

So I took the floor on Wednesday and said there must have been some mistake, because when it left the Senate 100 Members of this body—all the Republicans and all the Democrats—had supported a provision. It went over to the House, but something happened on the way back from the House. It was omitted. I did not read every page, and I trusted the summary. But when I scanned the 500 items in here and did not find it, I came to the floor.

I went to the Republican leaders, I went to the Democratic leaders, and I said: Please know that I cannot accept passing a $137 billion tax bill that fattens the paychecks of many people in America, some of whom are, I am sure, deserving, but keeps the paychecks of the Guard and Reserve—the men and women who are taking 100 percent of the risk today, the families who are making almost all the sacrifice, and the men and women who are actually losing pay—I cannot for the life of me understand, and no one in my State can understand, how they were left out.

So I have made it clear that I am prepared to stay here until the very end, whether that end is Wednesday, Thursday, Friday, or Saturday. I know I cannot keep this whole Senate here forever, but I can keep the Senate here for the better part of this week. It is not my intention. I am respectful of all the Senators' schedules. I am respectful of their other commitments. I am very respectful that a third of them are in reelections. I am not up for reelection, and I understand the tenseness of this election time. And we actually have a national election.

But my leader knows I do not come here with any small request. I do not come here with a LANDRIEU request. This is not even a Louisiana request. This is a national plea on behalf of the 645,000 men and women who have been called up to serve, to support us in Iraq, Afghanistan, and all places in between. How do we have the nerve to pass a tax bill and leave them out? So that is what the filibuster is about.

Let me be clear, I enjoy working with many Members on the Republican side. I see my good friend from Alabama here, Senator SESSIONS. He and I have worked together on coastal erosion issues. We have worked together on Armed Services before. I think he is going to have some comments about the work he has done which has been tremendous on the part of the Guard and the Reserve.

I say to the Presiding Officer, you and I just passed one of the few appropriations bills. People said it would never happen; it cannot happen; the DC appropriations bill will not pass; it will be contentious. If I may say, pat myself on the head, and you, too, we did a pretty good job of getting our bill through under a lot of odds that were against us. That bill is already gone, on the President's desk to sign. It strengthens schools, strengthens child welfare agencies in the District, for which the Presiding Officer deserves a lot of credit.

So please, I am not here to obstruct. I am not here to slow things down for no good reason. There are other provisions I did not get in this bill that I asked for. Fine, they are not in there. But I cannot, in good conscience, not speak and not stand on this floor for as long as it takes to get something done for them. I am representing many people, not myself, in this Chamber.

Let me say the good news in the 5 minutes I have left. We made some progress today. Several Members who had questions about the amendment in question have been working with their staffs. We may be coming up with a way that we could together get this amendment intact as much as I have already described it and get it connected to another bill that we can send back to the House.

I wish I could control what the House of Representatives does. I would like to go over there and give them a piece of my mind on their floor. But I am not allowed to do that. I am not. All I can do is stand here in the Senate, urge the Senators to stay strong and firm—we all voted for this amendment—and get it on a bill and send it back to them.

And when the leadership over there decides—because they can control their floor action. Our leadership cannot really control us that much. They can put a lot of pressure on us, but we are Senators and we can speak; and I intend to. The Members over there cannot speak freely because of the Constitution and the rules of the Congress, but the leadership will get this bill and they can decide, in October, November, December, or January, in this Congress or the next Congress, what they want to do about it. But what we can do is get this amendment negotiated.

I thank the Senators today who have been working on this. I feel not confident, but I feel encouraged. I feel encouraged that some parts of the amendment I have talked about that will help our Guard and Reserve to be a part of tax relief that we pass out of the Senate could be included. So I thank my leader.

Mr. President, I inquire, how much time of the 15 minutes do I have left?

The PRESIDING OFFICER. The Senator has 15 minutes 20 seconds left of her total time.

Ms. LANDRIEU. So I have about 6 minutes, because I had 7 under my previous order.

The PRESIDING OFFICER. The Senator is correct. That is the total time the Senator has left.

Ms. LANDRIEU. I have 8 minutes left. I would like to take those 8 minutes, and then I will reserve the last 7 minutes I have because that is all I have. Would the Chair inform me, please, at 7 minutes?

The PRESIDING OFFICER. Yes.

Ms. LANDRIEU. I will take the 8 minutes I have left to read a couple of e-mails I have received from people all over the country to give courage and support to the colleagues that are negotiating this. I think they can see this is important to a lot of people.

This is from ''Nobody.'' That is how they signed it. The name is Janice.

I have three Nephews and two Nieces that are in our National Guard, and they are being sent over to Iraq. I am so angry at the Congress and the Senate today but I pray they never have to see their Sons or Daughters go to this war. Let alone their Grandchildren. My Nephews and Nieces have left behind 11 children without any health coverage, let alone monies needed to survive. Yes, survive! Today my Husband and I . . . are taking care of three children of our loving Niece. It is hard on us as we are retired and living on a fixed income.

Might I add that I do not have health coverage any longer as the monthly payments became too much for us.

Please continue your fight for our Soldiers! We love you Senator for your Grace . . .

Another e-mail:

Thank you for standing there bravely for all of our Americans who are becoming more powerless with each passing day.

I am a disabled person barely able to stand on my own two legs, so I really appreciate that you are standing there for me and all of our National Guard troops.

I am watching you on CSpanII today. I know you are fighting for us and I am moved to thank you [for trying].

I will be watching. I will be waiting, and I appreciate it. Your desire to assist those individuals points to a bigger problem—military pay. Service members deserve better, all servicemen deserve better. Your efforts to help will create a situation in which reservists and National Guardsmen receive higher compensation than that of the full-time personnel.

The resolution to this problem is not providing a way to help reservists and National Guard make up income. It is helping them make up income and increasing the compensation for all service personnel.

He goes on to say that he supports our efforts.

Again, I will just share that in the last 14 years since 1990, we have called up 690,000 troops. In the previous 30 years, from the Berlin crisis to the Cuban missile crisis, the Vietnam war, we only called up 100,000. Our policies have put more pressure on the Guard and Reserve to stand shoulder to shoulder with the Active members. I agree, we need to improve the pay and compensation across the board, but I can't provide tax relief for the Active Reserve in the same way I can do it for the Guard and Reserve in this bill.

There are other benefits that are being provided. If we can explore the possibilities in the amendment I am supporting, I will be happy to do that. But it is for all of our troops that we stand here and try to work on an amendment that will give a tax credit to the companies that are being patriotic, doing the right thing, trying to keep the pay their reservists were making when they were homeside and now are losing sometimes 40 percent of that pay when they go to the front line. Many of our employers are picking up the difference.

The tax credit we have argued for will help those small companies—some of them struggling—to continue to pay their guardsmen and reservists. It is clear. It is convenient for the accounting systems of our companies, and we most certainly can afford it.

Again, $137 billion of tax relief getting ready to be voted on. I said I can't vote for this bill, but a majority of the Members will. I am not faulting them for that vote, but I am going to stay as long as it takes to get this amendment into this bill or at least get it attached to another bill so that we can say, as

Senators, that we did our job and we did the best.

I am happy to say the negotiations are going on, and they look promising. I thank my colleagues for being so open and for working through this today. I know it is unusual that we are in on a Sunday, but I thank them for their patience, and I retain the balance of my time.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. SESSIONS. Mr. President, I thank the Senator from Louisiana. I respect her commitment to this issue. It is something I have been giving a lot of thought to. I was a reservist for over 10 years in Alabama. I worked closely with the National Guard in the last month. I spent 2½ hours with the entire leadership team of the Alabama National Guard to discuss with them how best we could make the lives of our Guard and Reserve more meaningful, make it better, to help them and their families. I came away with a list of 11 things that I believe were good. I tried to get them in the Defense authorization bill—some of which we did, some of which we got positive, at least, reference in the bill. That is the right way to go about it.

The tax benefit for employers is a matter worthy of very serious discussion. It could indeed be a good way to help our Guard and Reserve. I don't dispute that. I don't dispute at all the sincerity of Senator LANDRIEU and her commitment to this issue.

I will just say this: What we need and what I have personally told the Secretary of Defense and Dr. Chu, the personnel director there, Chairman WARNER and Senator LEVIN, chairman of Armed Services and our ranking member, what we really need is to look at our Guard and Reserve carefully, to analyze what problems they are facing and help them.

As I told the leadership in the Defense Department, and I talked to the generals in charge of the Army National Guard, the Air Force National Guard, I have asked them also to think about how we can best help their members because we want to be generous to those citizen-soldiers who are in harm's way and have been in harm's way to help us carry out what I believe to be the national interest of the United States of America. Sometimes, unfortunately, that requires people to put their lives at risk.

I will note that the unit I used to be a member of, the 1184th Transportation Terminal, not long after I got out of it—about 10 years in that unit—a couple of years later they were activated and spent 9 months in Kuwait during the first gulf war. They came home, and under their new commander, COL Janet Cobb—she was at least at that time the commander—they were recalled to Kuwait to operate the port there in support of Operation Iraqi Freedom. I know those people. I was there when they went away. I have been at National Guard units when they went away.

I have friends in the Guard and Reserve in Alabama. When I was in Iraq in July, we came through Kuwait, and there was the 375th transportation unit—''motor transport'' I believe is the appropriate name. The 375th was a superior unit to mine. They evaluated us and were headquartered also in Alabama in the same Reserve center which I attended.

I saw in Kuwait John Cherry, an assistant U.S. attorney in the office I used to be a U.S. attorney in; Charles Coat, who used to work for me as an assistant U.S. attorney and now is assistant inspector general for TBA. I saw Randy Spier, who is an attorney in Mobile, AL, who I know and respect. I know how stressful it is for them and their families. I know and appreciate them very deeply. I had a lot of different ideas I wanted to get passed. I wished we could have gotten them in this bill. And some tax credit also was not a bad idea to help them in whatever appropriate way we do it. We have a limited amount of money and we have to make sure it goes out not in an aberrational or unprincipled way, but in a way that is best designed for fairness and to help the most members of the Guard and Reserve we can.

I believe that strongly. I think we are bouncing about here with people coming in with this idea and that idea, and I have my ideas. We need to get together seriously and think about what we can do to make lives better for our Guard and Reserve. They are critical to the defense of America. So I am putting a great deal of hope in section 513 of the Defense Authorization bill we passed yesterday, or today, called the Commission on National Guard and Reserves. It will be a 13-member commission, a bipartisan commission. It will do a number of things. Their duties are listed as follows:

To carry out a study of the following matters:

A, the roles and missions of the National Guard and other Reserve components of the armed services.

B, the compensation and other benefits, including tax benefits—I inserted a tax benefit, but it goes on to say: Including health care benefits that are provided for members of the Reserve components under the laws of the United States.

Subparagraph 2: In carrying out the study, the commission shall do the following:

A, assess the current roles and missions of the Reserve components and identify appropriate potential future roles and missions for the Reserve components; assess the capabilities of the Reserve components and determine how the units may be best used to support military operations.

C, assess the Department of Defense plan for implementation of section 115(b) of title X, United States Code.

D, assess the current organizational structure of the Guard and Reserve.

E, assess the manner in which the National Guard and other Reserve components are currently organized and funded for training, and identify an organizational and funding structure for training that best supports the achievement of training objectives and operational readiness.

Skipping F.

G, assess the adequacy and appropriateness of the compensation and benefits currently provided for the members of the National Guard and other Reserve components, including the availability of health care benefits and health insurance, and the effects of proposed changes in compensation and benefits on military careers in both Regular and Reserve components of the United States.

H, identify various feasible options for improving compensation and other benefits available to members of the National Guard and members of the other Reserve components, and assess the cost effectiveness of such options—that is a good idea—and the foreseeable effects of such options on readiness, recruitment, retention of personnel for careers in the Regular and Reserve components of the armed services.

I, assess the traditional military career paths for members of the Guard and the other Reserve components and identify alternative career paths that could enhance professional development; and assess the adequacy of the funding provided for the National Guard and other Reserve components.

And it says further on, at the conclusion, that the Secretary of Defense shall annually review the Reserve components of the Armed Forces with regard to the roles and mission.

B, the compensation and other benefits, including health care benefits, that are provided for members of the Reserve components under the laws of the United States; and the Secretary shall submit a report of an annual review, together with comments and recommendations that the Secretary considers appropriate to the Committee on Armed Services of the Senate and the Armed Services Committee in the House of Representatives.

Well, this is not certainly what I would like in the sense that I have a number of ideas I want to see put in this. So they didn't adopt in this bill the ideas I specifically suggested, although it did comment favorably on some. But it does put in a mechanism, I say to the Senator from Louisiana, and maybe together we can beat on some of these folks and maybe we can continue to press the issue hard, because I believe this Congress wants to, and will, increase benefits for the Guard and Reserve.

We obviously have a certain limited amount of money, but I think we will be generous about it. We ought to be. And then what we do spend, however, does need to be carefully studied. We should get the best insight from the most people and then we make those expenditures in a way that gets maximum impact on the members of our Guard and Reserve, who serve our country so very well.

I yield for a question.

Ms. LANDRIEU. If the Senator will yield for a question, I appreciate the Senator's comments. I look forward to working with him. He has been one of the leaders in supporting the Guard and Reserve. The question is, is he familiar with—if he is not, we can send it over—a letter from Secretary Bill Cohen on March 17, 1998, that says to the then-chairman of the Committee on National Security in the House—and this was in 1998—is the Senator aware that back in 1998, the former Secretary of Defense sent a letter noting:

With the increased use of the Guard and Reserve, particularly for unplanned contingency operations, employers of the Guard and Reserve members are often faced with the unplanned absences of their Reservist employees. They may incur additional business expenses associated with the unplanned absences.

Does the Senator from Alabama know this report that was sent to us in 1998—3 years before September 11, 2001, and 3 years before 643,000 Guard and Reserve were called up, and that the Department of Defense has been petitioning Congress to provide some tax credit for employers who are picking up 100 percent of the expense? Does the Senator know that, and would he like to comment about our ongoing efforts?

Mr. SESSIONS. There is a great deal to be said for that. I know the Senator has that letter from the Secretary of Defense in 1998. It does conclude by saying:

Tax or other incentives for employers might help to ameliorate some of their problems. Any such plan, of course, must compete for resources. . . .

We simply have to figure out how we can best utilize it. A tax credit is, in a sense, an expenditure of our money. It is a reduction in the amount of money that would come into the Treasury. If this is the best way to do it, as I know the Senator believes deeply, I will be supportive of it, too.

Ms. LANDRIEU. If the Senator will yield, the Senator is correct. It will compete for resources, and that is why those of us who have worked on this will be careful to request it at the appropriate time. We understand there is competition among resources. That is why I have taken the opportunity of talking, when we were about ready to pass this bill—$137 billion in tax credits. Surely, we could have found $2 billion out of this as we spread out the scarce resources. I would not call $137 billion scarce, but it is $137 billion out of which we could have found $2 billion.

We cannot amend that bill, but did the Senator know there might be another bill that already passed the House of Representatives, which is over here, that we could amend and send back to the House? It would not become law on this, and I know he knows that. But we could send it to the House, and if they pass it and send it to the President's desk, it could become law on a different bill?

Mr. SESSIONS. I was not aware of that. I would be surprised if that were the case. I would simply say I thank the Senator for pushing this issue. I have my list of 11 other issues I want to see. We did pass additional tax deductions several years ago for the Guard and Reserve that they can claim themselves when they have to travel extended distances. Many people, to be promoted or stay in the Guard and Reserve, often have to go to Reserve centers 200 or 300 miles away, and this is so they won't be forced out and they will be able to stay in and retire.

I think we ought to be helpful to them in that regard also. I would just again say that it is a tough question. Here is an example I have thought of—it makes me think we need to be careful—I think of an executive in a business with 30 or 40 people on the shop floor. The executive is making $100,000 a year. The guys on the shop floor are maybe making $30,000 or so. They are all activated, three or four of the shop floor people and the executive. For the lower income salaried workers, they may well be receiving just as much on active duty as they were in the Guard and Reserve, and we would be therefore helping pay a guy more money than we are the lower income people. In other words, maybe there is unfairness there, I do not know, but I do think it is great that so many of these businesses are willing to pay this compensation. I salute them for it. If we can assist them and encourage them to do more, I would.

(Mrs. DOLE assumed the Chair.)

Ms. LANDRIEU. Would the Senator yield for just one more question? He is so patient.

Mr. SESSIONS. I would yield for one more question.

Ms. LANDRIEU. I thank the Senator for yielding. Did the Senator know—because he raises an excellent point. We would not want to create a tax credit that basically allowed a $100,000 or $150,000 salaried worker to continue on the front line because it would inadvertently benefit the higher end. So did the Senator know that we crafted our amendment with a cap which we thought was reasonable so in the example that he gave, in the amendment that is being discussed now, that the $100,000 salaried worker who went over to Iraq would receive $30,000 in Reserve pay, according to our amendment, if his employer wanted to pay him up to $45,000 only, and they would get a $15,000 credit. So he would receive, on the front line, $45,000 instead of the $30,000, but he would still be losing $55,000 in income. So the family back home would still be losing $55,000 in income, which is a tough thing for these families.

I am not trying to help people who could otherwise help themselves, but that is still a pretty significant loss of income, as the Senator knows. But we do have a cap because of that purpose. We did not want to unfairly benefit those at the top end.

I will say that many employers are covering that gap now, and they are absorbing that difference now. We would only be subsidizing the first basically $15,000 of that. I would, frankly, be open to subsidizing more, but too many Members objected to that. So as a compromise, we sort of settled on this cap.

I understand what the Senator is saying. I just wanted to ask him if he was aware that we did have a cap on this amendment.

Mr. SESSIONS. I did understand that. I do think that the Senator is correct to say that this was not a thrown-together amendment, that the Senator thought about a lot of these tough issues that are in here. As I say, it may work for a rather small amount of compensation. We could encourage a lot more businesses to step forward and make this match or make up the difference, which would be good.

HISTORIC ELECTIONS IN AFGHANISTAN

Speaking of what our military does, the United Nations does a lot of things, as well as NGOs, Americans, and other countries do a lot to help around the world. But I do think our military deserve great credit for a lot of the things they do that help in a humanitarian way and help in ways that could not be accomplished otherwise.

Yesterday was a great day for the good people of Afghanistan. After decades of war, disruption, destruction, starvation, millions of people fleeing their homeland as refugees to Pakistan and other places, these wonderful people came together by the millions to cast their ballots for the first free nationwide election in Afghanistan's history.

The U.N. appointed joint electoral management body, Vice Chairman Ray Kennedy said this: The JEMB—that is his entity—is encouraged that the voters of Afghanistan have turned out in large numbers and the process overall has been safe and orderly.

That is a good fact. Many people predicted that we could not have elections, that elections could not be held on time in Afghanistan, that they could not be held effectively, and that is not what was said there. In fact, I think most people worried there would be a great deal of violence in Afghanistan. We thought the elections would go forward anyway, that the people were motivated to go out and vote, that they cared about it.

But I thought and was afraid that we would have bombings at polling places and things like that, which scared us. I am sure a lot of the Afghan people were somewhat afraid that if they went they might be attacked by the radical Taliban remnants that still desire to wrest control back of that country.

Another U.N. spokesman, Manual de Almeida de Silva said this: Overall, there was massive participation in the election.

It is especially gratifying that there was a large number of women voters who cast their ballots. They made up 40

percent. The distinguished Presiding Officer, Senator DOLE, who was the chairman of the Red Cross, traveled the whole world on a regular basis and knows the difficulties women have had around the world at various times and certainly had in Afghanistan under the Taliban when they could not even go to school and they had to, by law, wear these burqas and were beaten if they did not, and they could not work.

Forty percent of the 10 million people who registered to vote in Afghanistan were women, and they cast ballots all over that country.

An article in today's Washington Times quotes a Kabul shopkeeper as saying this: For the first time, Afghans are able to choose their own leader.

He added: From today, things will only get better in our country.

And can we not hope so for those people who suffered so much over 20 years of destruction, war, warlords, religious hostility and violence?

Things are going so much better. I do not know what the figure now is of the number of refugees who returned, but within not too many months after the conclusion of this operation in Afghanistan a million refugees returned home to Afghanistan. They were voting with their feet. They believed that life was going to be better, safer. Yes, we have had dangers, we have had bombings, we have had resistance from many of these groups that are determined to hold onto their power, but the people are voting in these elections, and it is something that we should celebrate.

The people took the election seriously. I am sure many of them had to consider that they were at risk when they went to vote. They took seriously the hanging chad foul-ups—maybe I will call it that—that occurred. They apparently did not ink the right finger in the right way or caused a disturbance and some of them protested and their protests were taken seriously, but the people voted.

Some say, well, you should not even vote. We ought not to vote because they did not ink the finger right. But the people voted, and they voted in record numbers. It is going to be a healthy thing for the future, and they are going to be heard. Their complaints will be listened to and I believe they are unlikely to ever occur again.

It is particularly dicey, in these first election times. Some people want to boycott the election. They realize they are losing. If they just go and vote and cast their ballots and only get 5 percent or 10 percent, then what do they tell their supporters, that we were rejected? That is what happens in the United States. Everybody in the whole world sees you get whacked. But what often happens in developing countries that do not have experience with democracy, they will say: I am going to pull out. I will ask my people not to participate. So when the votes are counted they can try to say to their supporters: See, we would have gotten a lot of votes except we pulled out. So you had some of that in this election, I am afraid.

But the numbers are so strong, the number of women are so strong, it can only be asserted, as the U.N. did, that it was a tremendous success as an election.

Yesterday was a historic and peaceful demonstration of democracy in Afghanistan. It is a day of great significance for them and the world because the world participated with American leadership in bringing this about. Yes, people were killed in the hostilities that occurred in Afghanistan. But I want you to know there were millions—well over a million, maybe several million Afghan people living in refugee camps around the world, over a million in Pakistan—they are able to come home because we moved militarily, decisively, and effectively. The country is going to now have a democracy. Their economy has a chance to develop. I could not be more proud for them.

When I was in Afghanistan in July, I had the honor to meet, for my second time in Afghanistan, President Hamid Karzai. He has to be considered, in my opinion, one of the world's great leaders. Under this tremendous stress and difficulty, where his life is in jeopardy, he seems to have captured the spirit of the Afghan people. He told us the Afghan people are ahead of the politicians. They know they need to have a good government for their entire country. They know that warlords threaten their stability. They know that warlords will hold back their progress. They want progress. They want freedom. They want prosperity. They want democracy. And President Karzai, in his address to the joint session of Congress, was so eloquent on that point. Speaking in beautiful English, he described his goals and visions for the people.

I don't know how the election will come out. Most people are predicting he will do very well in the election. We will see. The votes have not been counted yet. But I have been so impressed with his personal courage, his personal understanding of the historical moment of which he is a part. He is putting his life on the line for his people. Indeed, if this thing continues and he continues his successful role, he could certainly be considered the George Washington of Afghanistan.

One Afghan citizen, Mr. Amari, said:

What is important is that we are on our way to becoming a democracy.

Aren't those great words? ''We are on our way to becoming a democracy.'' I think President Bush was correct the other day to say democracy is on the march around the world.

We have had a very difficult time in Iraq. We are going to have other difficult days in the future in Iraq. The circumstances there are just difficult. We have determined adversaries, various groups of them. They are together sometimes, and sometimes they are independent. You get one to agree, and there is another one unhappy. So it is difficult to make as much progress as rapidly as we would like there. But we are seeing the electoral process go forward in Iraq, and we are going to see it continue to progress, I believe.

I would like to share what was in today's paper. This was Mariam Karouny of the Reuters News Agency who wrote an article about what has happened in Iraq today. This is today's paper. People are so negative about everything, saying everything is wrong. They see only the bad. They only see the difficulties. We had difficulties after World War II. We had difficulties in trying to help South Korea. Now they have 500,000 troops and they build an automobile. A Hyundai automobile plant is in Alabama. I was pleased to see in USA Today that complaints against their automobile is the lowest of any automobile except Lexus. That was a country that had a lot of difficulties 50 years ago. We have 37,000 troops in South Korea today. They have 650,000. But they are a booming, progressive democracy. So things don't happen overnight.

Let me read to you what was in today's newspaper, Reuters News Agency, about Iraq. The lead paragraph.

Baghdad—Iraq's plan to hold elections in January gained traction yesterday after a Shi'ite militia agreed to disarm in Baghdad and delegates from the rebel-held Falluja [the center of resistance] said the Sunni Muslim city wanted to vote in the elections.

It goes on.

The progress came in separate sets of talks with the Iraqi interim government and U.S. officials.

The Mahdi's Army militia, led by radical Shi'ite cleric Sheik Muqtada al-Sadr, agreed to hand over weapons to Iraqi police beginning tomorrow under a deal that could defuse the Baghdad flash point of Sadr City.

That is the core of the Baghdad danger area, the area where the violence is occurring. This is really rather remarkable. Will it all come to pass? I don't know. But just the fact that the Mahdi Army's militia has agreed to hand over their weapons, even if they all don't do it, that is something new. And they announced they wanted to do that. They announced they will participate in elections. Those are dramatic steps, I believe, and leaves them far less able to generate continuing violence against the interim Government of Iraq, the provisional Government of Iraq, if they already are admitting that they are prepared to turn in their weapons. That is a tremendous event.

The article goes on:

Karim al-Bakhati, a tribal leader negotiating for people in Sadr City, said U.S. forces had promised to stop bombarding the vast Shi'ite slum area with immediate effect.

''We have agreed that starting from Monday, the Sadr movement will hand over its weapons to the Iraqi police,'' he said, adding that collection points would be chosen in the next day or two.

Al-Sadr aides—this Muqtada al-Sadr, the most prominent leader of the militias that have conducted violence against the central government and

the United States—this is what it says about him:

Al-Sadr aides said the agreement would apply initially only to Sadr City, not to other restive Shi'ite areas of Iraq.

Falluja delegates—

This is the delegates from the center of resistance, the Sunni area of Falluja—

Falluja delegates said the city wanted to take part in the elections and could accept the return of Iraqi security forces.

''A delegation from Fallujah is now discussing the entry of Iraqi national guards to the city with the Defense Ministry,'' chief Fallujah negotiator Khaled al-Jumaili said.

He goes on to say:

The people of Fallujah support the elections and want to vote in them.

Isn't that great news? The people of Fallujah support the election. They believe that a new government can be formed in Iraq. Otherwise, they will not support elections. They support them and want to participate in them. This is the core of the resistance. Some people are under some doubt about how we should handle Fallujah. Some have said we need to send in troops and some say we should negotiate, maybe a combination of the two that was chosen, and a lot of people want to complain. But maybe just a little restraint, maybe a wise application of power here, the combination of that, has brought their town around. So we have a much better chance than we would have thought.

It goes on to say:

''The people of Fallujah support the elections and want to vote in them,'' said Mr. Al-Jumaili, a mosque preacher who is a member of the lawless city's Mujahideen shura, or council.

I don't know whether all of that will come, but I believe that any people in the world given the opportunity to choose democracy and freedom over totalitarianism and oppression will choose good government over a corrupt and abusive government.

We have undertaken by a vote of three-fourths-plus Members of this Senate, after weeks and indeed months of debate and discussion, a war to overthrow Saddam Hussein, and we committed to work to help them establish a good government. We cast that vote, and we have some people who cast that vote who now want to complain about this and that and see nothing but the negative and comment inadvertently, which I believe can make progress more dire. Some of them have been negative. But we made a commitment. We voted.

We had the same basic intelligence which the Presiding Officer also had when she attended the secret briefings, which we all had and which the President had. The fundamental thing they told us was the same as was told to the President of the United States by former CIA Director Tenet, who was appointed to that position by President Clinton. According to Mr. Woodward's book, he raised his hands when the President of the United States asked if we would find weapons of mass destruction and with clarity said, ''a slam dunk.'' That is what we were told. That is what the President was told.

We had every reason to believe there would be weapons of mass destruction in Iraq. Why? Because he had them before. He had used them on his own people. He had used them on the Iranian people in that horrible war he started that resulted in the deaths of 1 million Iranians.

I talked to a man from Iran just the other day. He drove that number home to me. He said the people of Iran never supported Saddam Hussein. He said: We supported his overthrow. He said: He killed 1 million of our people in a stupid war that had no justification whatsoever as well as that stupid war he undertook against Kuwait, which former President Bush had to send in troops and boot him out of Kuwait.

It was a difficult time, I remember, after that war. What happened was Saddam Hussein essentially sued for peace. He asked us to stop moving into Baghdad, and if we did so he would cease to be a threat to his region, he would renounce his weapons of mass destruction, demonstrate that he did not have them and was not pursuing them, would make his country open to United Nations inspections, and he would not oppress the different ethnic groups in his country.

He didn't adhere to any of that. After the war, he was in violation of 16 United Nations resolutions. He was counting on the embargo in the Oil for Food Program. Many of the countries that voted against the war were corruptly involved in that Oil for Food Program. The United Nations' hands are not clean with regard to the Oil for Food Program for sure. It was good in concept, but it was being abused greatly. He was determined, as Mr. Duelfer told us the other day in his testimony, to break that embargo and recommence the building of his weapons of mass destruction. That was his goal, of which there can be little doubt.

This country is better off with him gone. We are making progress, as I just read, in establishing a more decent government in that country, helping them to overcome this violence. I believe as time goes by we will continue to make progress. It is not going to be easy, unfortunately. There are resistance groups that are tough and tenacious. But it is great to see leaders of the more radical groups like Al-Sadr's militia talking about turning in their weapons and cooperating.

It is great to see the people of Fallujah and their representatives saying they want elections and they want to participate in them and make us believe those soldiers we sent there, our Guard and Reserve who have been sent there, have served our country well. They placed their lives at risk for us in a policy we adopted, and they have successfully carried it out in a way that has given us an opportunity to do something good now in Iraq. Certainly we are seeing great progress in Afghanistan.

I thank the Chair. I yield the floor.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

STEM CELL RESEARCH

Mr. FRIST. Madam President, we are currently in conversations about the schedule for tonight and tomorrow, and as that discussion continues, I will spend the next few minutes talking about an entirely different topic, and it concerns stem cell research.

I bring to the floor this whole discussion of stem cell research because it has been so much of the news of late in part in the Presidential debate and in part comments made by scientists and patients who look to the future promise of stem cell research. I really wanted to take the opportunity before we departed to clarify remarks that have been made by certain constituencies and also to reflect on where I think we are today, in part to restate what the President's policy is.

Senator KERRY, our distinguished colleague from Massachusetts, has made some remarks earlier this week on the issue. As in the past, the Senator from Massachusetts was not completely accurate in his comments to my mind, and I would like to explain why I feel that way.

There were some key facts about the science of stem cells that were deliberately excluded from those comments, and I think there have been some deliberate mischaracterizations made by the Senator from Massachusetts about President Bush's record on this issue. It is a critically important issue, a hugely promising field that we are going to be hearing a lot more about as the rapid advances in medical science are made.

It is important for the American people to be fully informed and to be accurately informed about stem cells and the President's stem cell policy, about the facts of the science so we can together participate in this debate.

There are several points I would like to make. First, what does the science entail, what are the basics?

First, scientists today are engaged in two basic types of stem cell research. One is adult stem cell research with cells taken from fully mature cells, for the most part. It might be cartilage or it might be bone marrow. The other type of research is embryonic, and that is where the cells are taken from human embryos. Embryonic stem cell—and this is really everything else—or adult or nonembryonic research. We think of it as embryonic and adult.

The adult stem cell research, which really doesn't have any real ethical

problems with it at all, has already led to successful human treatment. Embryonic stem cell research has not. Adult human stem cell research has promising but real treatments today.

Some examples. Researchers have treated diabetic patients with islet cells from the pancreas of deceased human donors. More than 80 percent of those treated were able to stop their insulin shots for more than a year. That is an adult stem cell type of research.

Adult bone marrow cells have been used successfully to heal chronic skin blemishes in patients.

Adult bone marrow stem cells also have shown promise in my own field of heart disease. In the journal ''Circulation'' this past March, patients showed significant improvement in heart function for several months after receiving injections of their own bone marrow stem cells. Again, these are all adult stem cells. Bone marrow stem cells, blood stem cells, and immature thigh muscle cells, all of which are adult stem cells, have been used to grow new heart tissue in both human subjects, as well as, of course, animal subjects. All of these human treatments are with adult stem cells. None are with embryonic stem cells.

Two, as policymakers and as scientists, we absolutely must be careful not to oversell the science of embryonic stem cell research. The tendency out there, and it is cruel to patients, is to overpromise and say with embryonic stem cell research you can be cured. We should not overpromise. As a physician, you never give a patient a false sense of hope. You want to give them real hope, but you do not want to give them a false sense of hope. That is wrong. Doctors should not do it. Scientists need to be very careful in making these promises to patients. Policymakers should not do it.

Both adult stem cell and embryonic stem cell research do hold potential promise. Yet the embryonic stem cell is still in its infancy, where adult stem cell is much further along. That is why we see these human treatments today. Embryonic stem cell research science offers hope. That is the hope for potential future advances that can be made in treating debilitating and life-threatening diseases, chronic diseases, and disabilities.

However, politicians and scientists have to be careful about overselling this science, about manipulating that hope that is out there way off in the future into hype or political gain. That is wrong. It is unfair to patients. It is unfair to humankind. We have to avoid this hyperbolic rhetoric. Giving false hope is wrong. It is wrong for a doctor to do it. It is wrong for a politician to do. Neither should cruelly exploit the hopes of patients and their families.

I have to give one example because it is one that is most commonly used. When President Ronald Reagan died earlier this year from complications probably associated with Alzheimer's disease, some who support unlimited embryonic stem cell experimentation rushed to suggest Alzheimer's could be cured with embryonic stem cells.

As a scientist, as a policymaker, as a physician, I have to say that is wrong. It is disingenuous. It is untrue. It gives people a false sense of hope. The science is not there today.

Today, there are far more promising avenues of research for the discoveries of treatment and cure for Alzheimer's disease. Alzheimer's disease is a plaque on top of cells and therefore the study formation and manipulation is not where the most promising areas of research are today. If you ask any scientist working in the field of Alzheimer's disease, they will tell you treatments involving embryonic stem cells are among the least likely fields of research to yield cures. They will also tell you even the most promising developments, none of which involve any type of stem cells, will not yield a cure for years, and maybe even a decade or more.

I mention Alzheimer's because it is the one most commonly used to give this false hope. As a physician, it hurts me to see that because it is wrong.

Stem cell research, both embryonic and adult, does hold real promise for a whole range of diseases, including certain types of diabetes, spinal cord injuries, Parkinson's disease. We should aggressively pursue both embryonic stem cell research and adult stem cell research. We need to do so vigorously, and we are, both embryonic and adult. However, we have to do so in a framework that respects ethical considerations and moral considerations. It does not matter what you call it, but put a framework around human research as we have done in every other field of human experimentation.

In my own field of heart transplantation, where you define brain death for the first time and you are removing living tissue from a body and transporting it to another body to give this body life, that whole field of experimentation has a framework of ethical and moral concerns that has to be defined with certain guidelines that are not crossed, no matter how promising that moving of tissue or transplantation might be. We call that human subjects protections. It is not unusual and thus doing so in the field of stem cell research is nothing new for a scientist or for a physician or for someone interested in medical research. There are ethical guidelines that we as a society must, should, and actually do establish for any type of human research.

The third point, President Bush's stem cell policy, what is it? President Bush's stem cell policy supports and encourages scientific discovery. It does so within an ethical framework. First, President Bush's policy funds all types of stem cell research, both embryonic and adult. He is the first President in history to fund embryonic stem cell research. All embryonic stem cell lines created before August 2001 are eligible for unlimited Federal funding.

Two, there are no funding limits on adult stem cell research whatever. That is the type of stem cell research, as I mentioned, that has yielded real results in human patients. Adult stem cell research is the type that is free of any sort of ethical concern. I will come back to the embryonic stem cell concern, what are the ethical concerns, in a moment.

The National Institutes of Health is spending record amounts for both embryonic stem cell research this year as well as adult stem cell research.

Four, the President has placed no limits or restrictions whatever on the private funding of embryonic and adult stem cell research. Private funding is legal and totally unrestricted.

Fifth, because this whole field of embryonic stem cell research is young, it is emerging, it is a relatively new science, and because it takes very specialized skill, highly trained skill and expertise, the Department of Health and Human Services has engaged in a number of activities. It has developed a stem cell clearinghouse or a stem cell bank of eligible lines. It has devoted substantial efforts to sharing that technical, specialized expertise with researchers around the world so the stem cell science will advance as rapidly as possible. The National Institutes of Health is establishing three stem cell, what we call centers of excellence. It has created a stem cell task force.

While we are vigorously searching for cures with stem cell research, under the President's policies, we are also showing respect for the moral significance of human embryos. The President has reached a careful balance. Pursue promising medical research, devote unprecedented Federal resources to health care breakthroughs with stem cells, allow unlimited private funding, but do not use Federal taxpayer dollars to destroy human life or create human embryos solely for the purpose of experimentation.

Fourth, there is no ban on stem cell research. I say that directly because our distinguished Senator from Massachusetts, Senator KERRY, claims the President has put, in his words, a ''sweeping ban'' on stem cell research. Those are his words, sweeping ban.

Last Monday he accused the President of ''sacrificing science for ideology and playing politics with people who need cures.'' Then he added that treatments ''could be right at our fingertips'' were it not for the—these are his words—''stem cell ban.''

Now, I just have to ask the Senator—I know he is not here now—but ''at our fingertips''? That is not right. ''Stem cell ban''? Wrong again, Senator KERRY. There is no ban.

President Bush is the first President, as I mentioned, in history, to fund embryonic stem cell research. The President is funding stem cell research, as I mentioned, at record levels. There is no limit on stem cell research or funding in the private sector.

These are the facts. Senator KERRY is playing politics with the truth. Even

worse, he is playing politics with the hope of those today who are suffering and their loved ones and their families. That, I believe, is irresponsible. It is cruel to play politics with people who need cures.

My fifth point, and last point, has to do with the moral significance of embryonic—of really the human embryo and why this ethical framework is so important and why this balance that the President achieved is so critically important.

It boils down to the fact that embryos do have moral significance, and they do deserve moral respect. The President believes we should conduct this research with the highest moral and ethical standards. The President has struck a balance. We must carefully weigh the potential, as far off as it might be, but the potential for saving lives against the reality of destroying life.

I say that because an embryo is biologically human, it is living, and it is genetically distinct. Thus, it deserves moral respect. Thus destruction of living human embryos for experimentation is not a morally neutral act.

In closing, these times are extraordinary for many reasons. In part it is because, as a physician, I see the tremendous advances that are being made in science, in my own field of heart disease and lung disease, but for arthritis and for spinal cord injuries, and a whole range of illnesses, really every illness. But the times are extraordinary, probably most profoundly because of the pace of change in our own lives.

Nothing is changing our lives quicker and with greater sweep than science today, and in particular, the scientific discovery within the field of medicine. It gives hope. It gives cures. It gives treatment. Science is moving more rapidly than ever, and the race will quicken. Every day it will quicken in the future.

I believe we have an obligation to vigorously support this progress, but we must do so in an ethically appropriate framework. No doubt, stem cell research shows great progress; it shows great promise. The President's policy harnesses that promise, and it also strikes a balance with the values of our people.

Mr. SESSIONS. Madam President, will the Senator yield?

Mr. FRIST. I am happy to yield.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. SESSIONS. Madam President, I thank Dr. FRIST for his comments. It has just clarified, for me, this issue. It was, as he explained it, basically as I thought the situation was. But the Senator refreshed our recollection. So the statement Senator KERRY made the other night criticizing a ''sweeping ban'' on stem cell research is not correct because there is no ban at all on stem cell research; is that correct?

Mr. FRIST. Madam President, indeed, in response, through the Chair, to the distinguished Senator from Alabama, there is no ban. There is certainly no ''sweeping ban.'' Yet you see in the headlines of newspapers references made to this ban, which reflects the words of someone who is running to be President of the United States, which I find unconscionable because of the impact it has on patients, people who do deserve real hope, and not a cruel hope of rhetoric which now has become hyperbole.

Mr. SESSIONS. Well, I thank the Senator and would ask one more question. I agree with you, that an embryo has all the characteristics that result in an adult human being. They deserve moral respect. I think that was an appropriate phrase you used.

I want to ask again, now: There is Federal funding for certain ongoing embryonic research; is that correct?

Mr. FRIST. Madam President, in response, there is Federal funding for embryonic stem cell research and adult stem cell research, embryonic stem cell research at record high levels, and adult stem cell research at record high levels, by the President of the United States using Federal taxpayer funds.

Mr. SESSIONS. Did I understand you to say that, to date, the embryonic stem cell research has produced no medical treatments that are proven efficacious, but the adult stem cell research, which is fully supported in every way by our Government, is showing some medical progress?

Mr. FRIST. Madam President, that is exactly right. Again, both have promise. Embryonic stem cell research is in its infancy and today has yielded no treatments for human disease. Adult stem cell research, there are numerous, I would say probably about 150 or 160 different areas of treatment using adult stem cells.

Mr. SESSIONS. Madam President, I thank the distinguished Senator from Tennessee.

As we all know, he is not just a Senator; he has been a physician, and not just a physician but one of America's finest physicians, a heart/lung transplant surgeon at the great Vanderbilt University School of Medicine. I think we ought to listen to his comments on this important issue. I thank him for sharing those comments with us.

Mr. FRIST. Madam President, let me just close with that comment, that the importance of the human subject type protections and having this ethical framework is because that human embryo is living, it is embryologically distinct in terms of a genetic formulation, and it is biologically human, and therefore deserves the respect that the President has given it.

I yield the floor.

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

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

WORKING ON THE SABBATH

Mr. SESSIONS. Madam President, earlier today, I was pleased to hear Senator ROBERT BYRD suggest we ought not to work on Sunday, on the Sabbath, lightly. He expressed his concerns about us having a session on a Sunday and quoted the Ten Commandments and Scripture, as he noted from the distinguish King James version of the Bible, telling us we ought to avoid this basically.

I think as a country we would be a lot better off if we were more scrupulous about that. I thank him for sharing that. I think since I have been in the Senate there have been very few days that we have worked on a Sunday. I know Senator FRIST is a man of faith, and he would not call on us to do so did he not think it was important and had justification consistent with the faith of most Americans and Christians. I know he is a Christian. We have other faiths here in the Senate, also.

I would just quote another part of the King James version that refers to the story of Jesus going through the cornfields on the Sabbath day. I am looking at Mark, Second Chapter, 23rd Verse:

. . . and his disciples began, as they went, to pluck the ears of corn.

And the Pharisees said unto him, Behold, why do they on the sabbath day that which is not lawful?

Jesus answered unto them, Have ye never read what David did when he had need, and was an hungered, he, and they that were with him?

How he went into the House of God in the days of Abiathar, the high priest, and did eat the shewbread, which it is not lawful to eat but for the priests, and gave also to them which were with him?

And he said unto them, The sabbath was made for man, and not man for the sabbath:

Therefore, the Son of man is Lord also of the sabbath.

Then it goes on, chapter 3, continues right on:

And he entered again into the synagogue; and there was a man there which had a withered hand.

And they watched him, whether he would heal him on the sabbath day; that they might accuse him.

And he said unto the man which had the withered hand, Stand forth.

And he said unto them, Is it lawful to do good on the sabbath days, or to do evil? to save life, or to kill? But they held their peace.

And when he had looked round about on them with anger, being grieved for the hardness of their hearts, he said unto the man, Stretch forth thine hand. And he stretched it out; and his hand was restored whole as the other.

I think that is authority for us also. We have a hurricane relief bill and other challenges facing America today. I don't think we need to make this a habit. I think we ought to be careful about what we do. I think under the circumstances, this is a justified day today. I wanted to share those thoughts.

I yield the floor.

The PRESIDING OFFICER. The majority leader.

UNANIMOUS CONSENT AGREEMENT

Mr. FRIST. Madam President, I ask unanimous consent that at 12 noon on Monday, October 11, the Senate proceed to a vote on adoption of the pending conference report to accompany H.R. 4520, the FSC legislation, with no intervening action or debate; provided further that following the vote on adoption of the conference report, the Finance Committee be discharged from further consideration of H.R. 1779 relating to penalty-free withdrawals, the Senate proceed to its consideration; all after the enacting clause be stricken and the substitute amendment which is at the desk be agreed to with the motion to reconsider laid upon the table; further, that the bill be read a third time and passed, again with the motion to reconsider laid upon the table; further, that Senator LANDRIEU be recognized to speak for 30 minutes on Monday before the adoption of the conference report.

I further ask consent that immediately following that vote, the cloture vote scheduled on the military construction appropriations conference report, H.R. 4837, be vitiated and the Senate then proceed immediately to a vote on adoption of the conference report, with no intervening action or debate; provided further that the Senate then proceed to a concurrent resolution which is at the desk relating to the enrollment of that measure and the resolution then be agreed to with the motion to reconsider laid upon the table; provided further that following that vote the Senate proceed to a vote on adoption of the Senate resolution which is at the desk regarding the instruction of conferees, with no intervening action or debate.

I further ask consent that following that action the Senate resume consideration of the conference report to accompany H.R. 4567, the Homeland Security appropriations measure; provided further that the cloture vote be vitiated and the Senate then vote on the adoption of the conference report, again with no intervening action or debate. I also ask consent that during the session of the Senate on Monday, October 11, Senator HARKIN be recognized to speak for up to 2 hours.

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

UNANIMOUS CONSENT AGREEMENT—S. 2845

Mr. FRIST. Mr. President, I ask unanimous consent that when the Senate receives from the House a message regarding S. 2845, the Senate disagree to the amendment from the House, agree to the request for a conference if one is requested, and that the Chair be authorized to appoint conferees on the part of the Senate in a ratio of either 7 to 6 or 6 to 5.

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

ADJOURNMENT OF THE SENATE AND HOUSE OF REPRESENTATIVES

Mr. FRIST. Mr. President, I ask unanimous consent that the Senate now proceed to the consideration of H. Con. Res. 518, the adjournment resolution, which is at the desk, provided that the concurrent resolution be agreed to and the motion to reconsider be laid upon the table.

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

The concurrent resolution (H. Con. Res. 518) was agreed to, as follows:

H. CON. RES. 518

Resolved by the House of Representatives (the Senate concurring), That when the House adjourns on the legislative day of Saturday, October 9, 2004, or Sunday, October 10, 2004, on a motion offered pursuant to this concurrent resolution by its Majority Leader or his designee, it stand adjourned until 2 p.m. on Tuesday, November 16, 2004, or until the time of any reassembly pursuant to section 2 of this concurrent resolution, whichever occurs first; and that when the Senate recesses or adjourns on any day from Saturday, October 9, 2004, through Friday, October 15, 2004, on a motion offered pursuant to this concurrent resolution by its Majority Leader or his designee, it stand recessed or adjourned until noon on Monday, November 15, 2004, or noon on Tuesday, November 16, 2004, as may be specified in the motion to recess or adjourn, or until such other time on either day as may be so specified, or until the time of any reassembly pursuant to section 2 of this concurrent resolution, whichever occurs first.

SEC. 2. The Speaker of the House and the Majority Leader of the Senate, or their respective designees, acting jointly after consultation with the Minority Leader of the House and the Minority Leader of the Senate, shall notify the Members of the House and the Senate, respectively, to reassemble at such place and time as they may designate whenever, in their opinion, the public interest shall warrant it.

The PRESIDING OFFICER. The Democratic leader.

Mr. DASCHLE. Madam President, I want to express my gratitude to a number of our colleagues who have worked with us to accomplish the multifaceted agreement that has now been put into place. I know this has been a very difficult and trying time for the entire Senate, and I know that my colleagues who have been to the floor and have expressed themselves over the last several days did so with the very best intent.

I think this is the best resolution to accommodate the very understandable concerns they have, but also to allow the Senate to complete its work. We have much more that needs to be done when we come back, and obviously we are going to be working on that. But this does allow us to move forward on what I think has been a very consequential week. The FSC bill, the military construction bill, the Homeland Security bill, the 9/11 conference report, the legislative reorganization, we have been able to do a good deal of work in a very short period of time. This will culminate our effort to complete the work and to move forward.

I appreciate very much their cooperation and their willingness to allow us to enter into this resolution.

I ask unanimous consent that Senator KENNEDY be recognized tomorrow to speak for up to 30 minutes.

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

Mr. FRIST. Madam President, while the Democratic leader is here, I want to again thank both him and the assistant Democratic leader and my assistant leader as well and all the parties who have had to participate in bringing the agreement we just reached together. What it means is that tomorrow at noon, we will be having a rollcall vote and that the remainder of the bills I mentioned would be handled by voice vote tomorrow. But we will have a single rollcall vote tomorrow at noon.

Mr. DASCHLE. Madam President, I would concur it is our understanding that these matters will be handled by voice except for the FSC conference report. While we do not have it before the Senate at the moment, we will also be asking that Senator BOXER be recognized for 30 minutes and that a resolution having to do with a provision she has been very involved with be taken up as well. But that would be momentarily. Again, I appreciate her cooperation, along with that of many others.

FAMILY SMOKING PREVENTION AND TOBACCO CONTROL ACT AMENDING FAIR LABOR STANDARDS ACT OF 1938

Mr. FRIST. Mr. President, I understand there are two bills at the desk to be passed under a previous order.

The PRESIDING OFFICER. Under the previous order, S. 2974 and S. 2975 are read the third time and passed en bloc, and the motion to reconsider is laid on the table.

The bills (S. 2974 and S. 2975) were read the third time and passed, en bloc, as follows:

S. 2974

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 ''Family Smoking Prevention and Tobacco Control Act''.

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 6,500,000 of today's children from becoming regular, daily smokers, saving over 2,000,000 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 2001, the tobacco industry spent more than $11,000,000,000 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 advertising than adults, they smoke the most advertised 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, 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 Act.

(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 plays 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 insuring 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 approved in advance of marketing, and to require that the evidence relied on to support approval of these products is rigorous.

SEC. 3. PURPOSE.

The purposes of this Act 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;

(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 Act (or an amendment made by this Act) 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 Act (or an amendment made by this Act) 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.

SEC. 5. SEVERABILITY.

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

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:

''(nn)(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—

''(A) a product in the form of conventional food (including water and chewing gum), a product represented for use as or for use in a conventional food, or a product that is intended for ingestion in capsule, tablet, softgel, or liquid form; or

''(B) an article that is approved or is regulated as a drug by the Food and Drug Administration.

''(3) The products described in paragraph (2)(A) shall be subject to chapter IV or chapter V of this Act and the articles described in paragraph (2)(B) shall be subject to chapter V of this Act.

''(4) A tobacco product may not be marketed in combination with any other article or product regulated under this Act (including a drug, biologic, food, cosmetics, 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 907 as sections 1001 through 1007; and

(3) by inserting after section 803 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, 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, or packaging, logo, registered trademark or brand name, identifiable pattern of colors, or any combination of such attributes.

''(3) CIGARETTE.—The term 'cigarette' has the meaning given that term by section 3(1) of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1332(1)), but also 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 for cigarettes 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 (15 U.S.C. 1332(2)).

''(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 TRIBE.—The term 'Indian tribe' has the meaning given such term in section 4(e) of the Indian Self Determination and Education Assistance Act (25 U.S.C. 450b(e)).

''(10) LITTLE CIGAR.—The term 'little cigar' has the meaning given that term by section 3(7) of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1332(7)).

''(11) 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.

''(12) 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.

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

''(14) ROLL-YOUR-OWN TOBACCO.—The term 'roll-your-own tobacco' means any tobacco 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.

''(15) 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.

''(16) 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.

''(17) STATE.—The term 'State' means any State of the United States and, for purposes of this chapter, includes 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.

''(18) TOBACCO PRODUCT MANUFACTURER.—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 cigarette or smokeless tobacco product for sale or distribution in the United States.

''(19) 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 shall be regulated by the Secretary under this chapter and shall not be subject to the provisions of chapter V, unless—

''(1) such products are intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease (within the meaning of section 201(g)(1)(B) or section 201(h)(2)); or

''(2) a claim is made for such products under section 201(g)(1)(C) or 201(h)(3);

other than modified risk tobacco products approved in accordance with section 911.

''(b) APPLICABILITY.—This chapter shall apply to all tobacco products subject to the regulations referred to in section 102 of the Family Smoking Prevention and Tobacco Control Act, 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 the Family Smoking Prevention and Tobacco Control Act, shall be construed to affect the Secretary's authority over, 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 any other provision of this subparagraph, 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.

''(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.

''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) 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;

''(5)(A) it is required by section 910(a) to have premarket approval and does not have an approved application in effect;

''(B) it is in violation of the order approving such an application; or

''(6) 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

''(7) 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 921(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 any State 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. 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 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 (15 U.S.C. 52 through 55).

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

''(a) REQUIREMENT.—Not later than 6 months after the date of enactment of the Family Smoking Prevention and Tobacco Control Act, each tobacco product manufacturer or importer, or agents thereof, shall submit to the Secretary the following information:

''(1) 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(a)(4) of the Federal Cigarette Labeling and Advertising Act.

''(3) 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 2 years after the date of enactment of this chapter, the manufacturer, importer, or agent shall comply with regulations promulgated under section 915 in reporting information under this paragraph, where applicable.

''(4) All documents developed after the date of enactment of the Family Smoking Prevention and Tobacco Control Act 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 12 months after the date of enactment of the Family Smoking Prevention and Tobacco Control Act, the Secretary shall establish 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.

''(c) REGISTRATION OF 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 in any State registered with the Secretary under this section shall be subject to inspection under section 704, 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) FOREIGN ESTABLISHMENTS SHALL REGISTER.—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) of this section 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 has 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) 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 June 1, 2003, 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 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 June 1, 2003, that is in compliance with the requirements of this Act; 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 JUNE 1, 2003 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 June 1, 2003, and prior to the date that is 15 months after the date of enactment of the Family Smoking Prevention and Tobacco Control Act shall be submitted to the Secretary not later than 15 months after such date of enactment.

''(3) EXEMPTIONS.—

''(A) IN GENERAL.—The Secretary may by regulation, exempt from the requirements of this subsection 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 authorized for sale 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 9 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 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 non-users 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.

''(e) GOOD MANUFACTURING PRACTICE REQUIREMENTS.—

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

''(A) IN GENERAL.—The Secretary may, 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, as prescribed in such regulations, to assure that the public health is protected and that the tobacco product is in compliance with this chapter. Good manufacturing practices may include 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 advisory committee a reasonable time to make its recommendation with respect to proposed regulations under subparagraph (A); and

''(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.

''(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, controls, and facilities 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 period ending 3 years after 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 without regard to section 3324(a) and (b) of title 31, United States Code, and section 5 of title 41, United States Code.

''SEC. 907. TOBACCO PRODUCT STANDARDS.

''(a) IN GENERAL.—

''(1) SPECIAL RULE FOR CIGARETTES.—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 paragraph.

''(2) REVISION OF TOBACCO PRODUCT STANDARDS.—The Secretary may revise the tobacco product standards in paragraph (1) in accordance with subsection (b).

''(3) TOBACCO PRODUCT STANDARDS.—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. This finding shall be determined with respect to the risks and benefits to the population as a whole, including users and non-users 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.

''(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 the reduction of 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 (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); and

''(C) shall, where appropriate, require the use and prescribe the form and content of labeling for the proper use of the tobacco product.

''(5) PERIODIC RE-EVALUATION 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) ESTABLISHMENT OF STANDARDS.—

''(1) NOTICE.—

''(A) 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.

''(B) REQUIREMENTS OF NOTICE.—A notice of proposed rulemaking for the establishment or amendment of a tobacco product standard for a tobacco product shall—

''(i) set forth a finding with supporting justification that the tobacco product standard is appropriate for the protection of the public health;

''(ii) set forth proposed findings with respect to the risk of illness or injury that the tobacco product standard is intended to reduce or eliminate; and

''(iii) invite interested persons to submit an existing tobacco product standard for the tobacco product, including a draft or proposed tobacco product standard, for consideration by the Secretary.

''(C) STANDARD.—Upon a determination by the Secretary that an additive, constituent (including smoke constituent), or other component of the product that is the subject of the proposed tobacco product standard is harmful, it shall be the burden of any party challenging the proposed standard to prove that the proposed standard will not reduce or eliminate the risk of illness or injury.

''(D) 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.

''(E) CONSIDERATION BY SECRETARY.—The Secretary shall consider all 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 non-tobacco 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, and shall issue the standard if the Secretary determines that the standard would be appropriate for the protection of the public health.

''(F) COMMENT.—The Secretary shall provide for a comment period of not less than 60 days.

''(2) PROMULGATION.—

''(A) IN GENERAL.—After the expiration of the period for comment on a notice of proposed rulemaking published under paragraph (1) respecting a tobacco product standard and after consideration of such comments and any report from the Tobacco Products Scientific Advisory Committee, the Secretary shall—

''(i) promulgate a regulation establishing a tobacco product standard and publish in the Federal Register findings on the matters referred to in paragraph (1); or

''(ii) publish a notice terminating the proceeding for the development of the standard together with the reasons for such termination.

''(B) 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.

''(3) POWER RESERVED TO CONGRESS.—Because of the importance of a decision of the Secretary to issue a regulation establishing a tobacco product standard—

''(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,

Congress expressly reserves to itself such power.

''(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 paragraphs (1) and (2)(B), 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) REFERENCE TO ADVISORY COMMITTEE.—The Secretary may—

''(A) on the Secretary's own initiative, refer a proposed regulation for the establishment, amendment, or revocation of a tobacco product standard; or

''(B) upon the request of an interested person which demonstrates good cause for referral and which is made before the expiration of the period for submission of comments on such proposed regulation,

refer such proposed regulation 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. 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. The Tobacco Products Scientific Advisory Committee shall, within 60 days after the referral of a proposed regulation 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. A copy of such report and recommendation shall be made public by the Secretary.

''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) of this section.

''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 June 1, 2003; 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 June 1, 2003.

''(2) PREMARKET APPROVAL REQUIRED.—

''(A) NEW PRODUCTS.—Approval under this section of an application for premarket approval for any new tobacco product is required unless—

''(i) the manufacturer has submitted a report under section 905(j); and

''(ii) 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 June 1, 2003; and

''(II)(aa) is in compliance with the requirements of this Act; or

''(bb) is exempt from the requirements of section 905(j) pursuant to a regulation issued under section 905(j)(3).

''(B) APPLICATION TO CERTAIN POST JUNE 1, 2003 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 June 1, 2003, and prior to the date that is 15 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 15-month period, until 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 terms 'substantially equivalent' or 'substantial equivalence' mean, 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 for premarket approval 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) REFERENCE 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 approval of 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 paragraph (2) of such subsection, shall—

''(i) issue an order approving the application if the Secretary finds that none of the grounds for denying approval specified in paragraph (2) of this subsection applies; or

''(ii) deny approval of the application 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 approving an application for a tobacco product may require as a condition to such approval 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 APPROVAL.—The Secretary shall deny approval of an application for a tobacco product 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, compliance with which is a condition to approval of the application, 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 place such application in approvable 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 approval of a tobacco product 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 an advisory committee, and after due notice and opportunity for informal hearing to the holder of an approved application for a tobacco product, issue an order withdrawing approval of the application 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 approved, 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 approved, 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 the application was approved, 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 approval of 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 approval of the application 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 subsection (e).

''(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 approved application 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 approval of the application approved under this section. 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 approval of 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 approval.

''(2) ACCESS TO RECORDS.—Each person required under this section to maintain records, and each person in charge or 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 approval of an application filed pursuant to subsection (d) 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—

''(A) 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) 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 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 an advisory committee any application submitted under this subsection.

''(2) RECOMMENDATIONS.—Not later than 60 days after the date an application is referred to an advisory committee under paragraph (1), the advisory committee shall report its recommendations on the application to the Secretary.

''(g) APPROVAL.—

''(1) MODIFIED RISK PRODUCTS.—Except as provided in paragraph (2), the Secretary shall approve an application for a modified risk tobacco product filed under this section 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 approve an application for a tobacco product that has not been approved as a modified risk tobacco product pursuant to paragraph (1) if the Secretary makes the findings required under this paragraph and determines that the applicant has demonstrated that—

''(i) the approval of the application 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)(2) is limited to an explicit or implicit representation that such tobacco product or its smoke contains 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 anticipated in subsequent studies.

''(B) ADDITIONAL FINDINGS REQUIRED.—In order to approve an application 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 anticipated 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) approval of 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 APPROVAL.—

''(i) IN GENERAL.—Applications approved 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.—Applications approved under this paragraph shall be conditioned on the applicant's agreement to conduct post-market surveillance and studies and to submit to the Secretary the results of such surveillance and studies to determine the impact of the application approval on consumer perception, behavior, and health and to enable the Secretary to review the accuracy of the determinations upon which the approval was based in accordance with a protocol approved by the Secretary.

''(iii) ANNUAL SUBMISSION.—The results of such post-market 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 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 APPROVAL.—

''(1) MODIFIED RISK PRODUCTS.—The Secretary shall require for the approval of an application 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 approval of an application 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.—The Secretary shall limit an approval under subsection (g)(1) for a specified period of time.

''(5) ADVERTISING.—The Secretary may require that an applicant, whose application has been approved under this subsection, comply with requirements relating to advertising and promotion of the tobacco product.

''(i) POSTMARKET SURVEILLANCE AND STUDIES.—

''(1) IN GENERAL.—The Secretary shall require that an applicant under subsection (g)(1) conduct post market surveillance and studies for a tobacco product for which an application has been approved to determine the impact of the application approval on consumer perception, behavior, and health, to enable the Secretary to review the accuracy of the determinations upon which the approval 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 post-market 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 APPROVAL.—The Secretary, after an opportunity for an informal hearing, shall withdraw the approval of an application under this section 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 approval of the application 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 (i); or

''(5) the applicant failed to meet a condition imposed under subsection (h).

''(k) CHAPTER IV OR V.—A product approved in accordance with this section 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) establish minimum standards for scientific studies needed prior to approval to show that a substantial reduction in morbidity or mortality among individual tobacco users is likely;

''(B) include validated biomarkers, intermediate clinical endpoints, and other feasible outcome measures, as appropriate;

''(C) establish minimum standards for post market 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; and

''(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.

''(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 for which the applicant seeks approval as a modified risk tobacco product under this section.

''(m) DISTRIBUTORS.—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 for approval 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 (15 U.S.C. 45(a)) and shall be considered a violation of a rule promulgated under section 18 of that Act (15 U.S.C. 57a).

''(b) COORDINATION.—With respect to the requirements of section 4 of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1333) and section 3 of the Comprehensive Smokeless Tobacco Health Education Act of 1986 (15 U.S.C. 4402)—

''(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. CONGRESSIONAL REVIEW PROVISIONS.

''In accordance with section 801 of title 5, United States Code, Congress shall review, and may disapprove, any rule under this chapter that is subject to section 801. This section and section 801 do not apply to the regulations referred to in section 102 of the Family Smoking Prevention and Tobacco Control Act.

"SEC. 916. REGULATION REQUIREMENT.

''(a) TESTING, REPORTING, AND DISCLOSURE.—Not later than 24 months after the date of enactment of the Family Smoking Prevention and Tobacco Control Act, the Secretary, acting through the Commissioner of the Food and Drug Administration, shall promulgate regulations under this Act that meet the requirements of subsection (b).

''(b) CONTENTS OF RULES.—The regulations promulgated under subsection (a) shall require testing and reporting of tobacco product constituents, ingredients, and additives, including smoke constituents, by brand and sub-brand that the Secretary determines should be tested to protect the public health. The regulations 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 Food and Drug Administration shall have the authority under this chapter to conduct or to require the testing, reporting, or disclosure of tobacco product constituents, including smoke constituents.

"SEC. 917. PRESERVATION OF STATE AND LOCAL AUTHORITY.

''(a) IN GENERAL.—

''(1) PRESERVATION.—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.—Except as provided in paragraph (1) and subparagraph (B), 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 approval, adulteration, misbranding, labeling, registration, good manufacturing standards, or reduced risk 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 554(b)(4) of title 5, United States Code, shall be treated as 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. 918. TOBACCO PRODUCTS SCIENTIFIC ADVISORY COMMITTEE.

''(a) ESTABLISHMENT.—Not later than 1 year after the date of enactment of the Family Smoking Prevention and Tobacco Control Act, the Secretary shall establish a 11-member advisory committee, to be known as the 'Tobacco Products Scientific 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 the 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 in the tobacco manufacturing industry; and

''(v) 1 individual as a representative of the interests of the tobacco growers.

''(B) NONVOTING MEMBERS.—The members of the committee appointed under clauses (iv) and (v) of subparagraph (A) shall serve as consultants to those described in clauses (i) through (iii) of subparagraph (A) and shall be nonvoting representatives.

''(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 of the Advisory Committee 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 for level 4 of 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 (5 U.S.C.
App.) 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. 919. DRUG PRODUCTS USED TO TREAT TOBACCO DEPENDENCE.

''The Secretary shall consider—

''(1) at the request of the applicant, designating nicotine replacement products as fast track research and approval products within the meaning of section 506;

''(2) direct the Commissioner to consider approving the extended use of nicotine replacement products (such as nicotine patches, nicotine gum, and nicotine lozenges) for the treatment of tobacco dependence;

''(3) review and consider the evidence for additional indications for nicotine replacement products, such as for craving relief or relapse prevention; and

''(4) consider—

''(A) relieving companies of premarket burdens under section 505 if the requirement is redundant considering other nicotine replacement therapies already on the market; and

''(B) time and extent applications for nicotine replacement therapies that have been approved by a regulatory body in a foreign country and have marketing experience in such country.

''SEC. 920. USER FEE.

''(a) ESTABLISHMENT OF QUARTERLY USER FEE.—The Secretary shall assess a quarterly user fee with respect to every quarter of each fiscal year commencing fiscal year 2004, calculated in accordance with this section, upon each manufacturer and importer of tobacco products subject to this chapter.

''(b) FUNDING OF FDA REGULATION OF TOBACCO PRODUCTS.—The Secretary shall make user fees collected pursuant to this section available to pay, in each fiscal year, for the costs of the activities of the Food and Drug Administration related to the regulation of tobacco products under this chapter.

''(c) ASSESSMENT OF USER FEE.—

''(1) AMOUNT OF ASSESSMENT.—Except as provided in paragraph (4), the total user fees assessed each year pursuant to this section shall be sufficient, and shall not exceed what is necessary, to pay for the costs of the activities described in subsection (b) for each fiscal year.

''(2) ALLOCATION OF ASSESSMENT BY CLASS OF TOBACCO PRODUCTS.—

''(A) IN GENERAL.—Subject to paragraph (3), the total user fees assessed each fiscal year with respect to each class of importers and manufacturers shall be equal to an amount that is the applicable percentage of the total costs of activities of the Food and Drug Administration described in subsection (b).

''(B) APPLICABLE PERCENTAGE.—For purposes of subparagraph (A) the applicable percentage for a fiscal year shall be the following:

''(i) 92.07 percent shall be assessed on manufacturers and importers of cigarettes;

''(ii) 0.05 percent shall be assessed on manufacturers and importers of little cigars;

''(iii) 7.15 percent shall be assessed on manufacturers and importers of cigars other than little cigars;

''(iv) 0.43 percent shall be assessed on manufacturers and importers of snuff;

''(v) 0.10 percent shall be assessed on manufacturers and importers of chewing tobacco;

''(vi) 0.06 percent shall be assessed on manufacturers and importers of pipe tobacco; and

''(vii) 0.14 percent shall be assessed on manufacturers and importers of roll-your-own tobacco.

''(3) DISTRIBUTION OF FEE SHARES OF MANUFACTURERS AND IMPORTERS EXEMPT FROM USER FEE.—Where a class of tobacco products is not subject to a user fee under this section, the portion of the user fee assigned to such class under subsection (d)(2) shall be allocated by the Secretary on a pro rata basis among the classes of tobacco products that are subject to a user fee under this section. Such pro rata allocation for each class of tobacco products that are subject to a user fee under this section shall be the quotient of—

''(A) the sum of the percentages assigned to all classes of tobacco products subject to this section; divided by

''(B) the percentage assigned to such class under paragraph (2).

''(4) ANNUAL LIMIT ON ASSESSMENT.—The total assessment under this section—

''(A) for fiscal year 2004 shall be $85,000,000;

''(B) for fiscal year 2005 shall be $175,000,000;

''(C) for fiscal year 2006 shall be $300,000,000; and

''(D) for each subsequent fiscal year, shall not exceed the limit on the assessment imposed during the previous fiscal year, as adjusted by the Secretary (after notice, published in the Federal Register) to reflect the greater of—

''(i) the total percentage change that occurred in the Consumer Price Index for all urban consumers (all items; United States city average) for the 12-month period ending on June 30 of the preceding fiscal year for which fees are being established; or

''(ii) the total percentage change for the previous fiscal year in basic pay under the General Schedule in accordance with section 5332 of title 5, United States Code, as adjusted by any locality-based comparability payment pursuant to section 5304 of such title for Federal employees stationed in the District of Columbia.

''(5) TIMING OF USER FEE 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 subsection (f) during each quarter of each fiscal year. Such notifications shall occur not earlier than 3 months prior to the end of the quarter for which such assessment is made, and payments of all assessments shall be made not later than 60 days after each such notification.

''(d) DETERMINATION OF USER FEE BY COMPANY MARKET SHARE.—

''(1) IN GENERAL.—The user fee to be paid by each manufacturer or importer of a given class of tobacco products shall be determined in each quarter by multiplying—

''(A) such manufacturer's or importer's market share of such class of tobacco products; by

''(B) the portion of the user fee amount for the current quarter to be assessed on manufacturers and importers of such class of tobacco products as determined under subsection (e).

''(2) NO FEE IN EXCESS OF MARKET SHARE.—No manufacturer or importer of tobacco products shall be required to pay a user fee in excess of the market share of such manufacturer or importer.

''(e) DETERMINATION OF VOLUME OF DOMESTIC SALES.—

''(1) IN GENERAL.—The calculation of gross domestic volume of a class of tobacco product by a manufacturer or importer, and by all manufacturers and importers as a group, shall be made by the Secretary using information provided by manufacturers and importers pursuant to subsection (f), as well as any other relevant information provided to or obtained by the Secretary.

''(2) MEASUREMENT.—For purposes of the calculations under this subsection and the information provided under subsection (f) by the Secretary, gross domestic volume shall be measured by—

''(A) in the case of cigarettes, the number of cigarettes sold;

''(B) in the case of little cigars, the number of little cigars sold;

''(C) in the case of large cigars, the number of cigars weighing more than 3 pounds per thousand sold; and

''(D) in the case of other classes of tobacco products, in terms of number of pounds, or fraction thereof, of these products sold.

''(f) MEASUREMENT OF GROSS DOMESTIC VOLUME.—

''(1) IN GENERAL.—Each manufacturer and importer of tobacco products shall submit to the Secretary a certified copy of each of the

returns or forms described by this paragraph that are required to be filed with a Government agency on the same date that those returns or forms are filed, or required to be filed, with such agency. The returns and forms described by this paragraph are those returns and forms related to the release of tobacco products into domestic commerce, as defined by section 5702(k) of the Internal Revenue Code of 1986, and the repayment of the taxes imposed under chapter 52 of such Code (ATF Form 500.24 and United States Customs Form 7501 under currently applicable regulations).

''(2) PENALTIES.—Any person that knowingly fails to provide information required under this subsection or that provides false information under this subsection shall be subject to the penalties described in section 1003 of title 18, United States Code. In addition, such person may be subject to a civil penalty in an amount not to exceed 2 percent of the value of the kind of tobacco products manufactured or imported by such person during the applicable quarter, as determined by the Secretary.

''(h) EFFECTIVE DATE.—The user fees prescribed by this section shall be assessed in fiscal year 2004, based on domestic sales of tobacco products during fiscal year 2003 and shall be assessed in each fiscal year thereafter.''.

SEC. 102. INTERIM FINAL RULE.

(a) CIGARETTES AND SMOKELESS TOBACCO.—

(1) IN GENERAL.—Not later than 30 days after the date of enactment of this Act, the Secretary of Health and Human Services shall publish in the Federal Register an interim final rule regarding cigarettes and smokeless tobacco, which is hereby deemed to be in compliance with the Administrative Procedures Act and other applicable law.

(2) CONTENTS OF RULE.—Except as provided in this subsection, the interim 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;

(B) strike Subpart C—Labeling and section 897.32(c); and

(C) become effective not later than 1 year after the date of enactment of this Act.

(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 the Administrative Procedures Act.

(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 the Administrative Procedures Act, the regulation promulgated pursuant to this section.

(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 entitled ''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 entitled ''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 entitled ''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 entitled ''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), by striking ''515(f), or 519'' and inserting ''515(f), 519, or 909'';

(5) in subsection (g), by inserting ''tobacco product,'' after ''device,'';

(6) in subsection (h), by inserting ''tobacco product,'' after ''device,'';

(7) in subsection (j), by striking ''708, or 721'' and inserting ''708, 721, 904, 905, 906, 907, 908, 909, or section 921(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)(2).'';

(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)(8), or 908, or condition prescribed under section 903(b)(6)(B)(ii)(II);

''(B) to furnish any notification or other material or information required by or under section 519, 520(g), 904, 909, or section 921; 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 ''device'' each time that it appears; and

(13) by adding at the end the following:

''(aa) The sale of tobacco products in violation of a no-tobacco-sale order issued under section 303(f).

''(bb) The introduction or delivery for introduction into interstate commerce of a tobacco product in violation of section 911.

''(cc)(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.

''(dd) The charitable distribution of tobacco products.

''(ee) The failure of a manufacturer or distributor to notify the Attorney General of their knowledge of tobacco products used in illicit trade.''.

(c) SECTION 303.—Section 303 (21 U.S.C. 333(f)) is amended in subsection (f)—

(1) by striking the subsection heading and inserting the following:

''(f) CIVIL PENALTIES; NO-TOBACCO-SALE ORDERS.—'';

(2) in paragraph (1)(A), by inserting ''or tobacco products'' after ''devices'';

(3) by redesignating paragraphs (3), (4), and (5) as paragraphs (4), (5), and (6), and inserting after paragraph (2) the following:

''(3) 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).'';

(4) in paragraph (4) as so redesignated—

(A) 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'' and inserting ''penalty, or upon whom a no-tobacco-order is to be imposed,'';

(B) 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

(C) by adding at the end, the following:

''(D) The Secretary may compromise, modify, or terminate, with or without conditions, any no-tobacco-sale order.'';

(5) in paragraph (5) as so redesignated—

(A) by striking ''(3)(A)'' as redesignated, and inserting ''(4)(A)'';

(B) by inserting ''or the imposition of a no-tobacco-sale order'' after ''penalty'' the first 2 places it appears; and

(C) by striking ''issued.'' and inserting ''issued, or on which the no-tobacco-sale order was imposed, as the case may be.''; and

(6) in paragraph (6), as so redesignated, by striking ''paragraph (4)'' each place it appears and inserting ''paragraph (5)''.

(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: '', (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 ''device'' each place it appears; and

(4) in subsection (g)(2)(A), by inserting ''or tobacco product'' after ''device'' each place it appears.

(e) SECTION 702.—Section 702(a) (21 U.S.C. 372(a)) is amended—

(1) by inserting ''(1)'' after ''(a)''; and

(2) by adding at the end thereof the following:

''(2) For a tobacco product, to the extent feasible, the Secretary shall contract with the States in accordance with paragraph (1) to carry out inspections of retailers in connection with the enforcement of this Act.''.

(f) SECTION 703.—Section 703 (21 U.S.C. 373) is amended—

(1) by inserting ''tobacco product,'' after ''device,'' each place it appears; and

(2) by inserting ''tobacco products,'' after ''devices,'' each place it appears.

(g) SECTION 704.—Section 704 (21 U.S.C. 374) is amended—

(1) in subsection (a)(1)(A), by inserting ''tobacco products,'' after ''devices,'' each place it appears;

(2) in subsection (a)(1)(B), by inserting ''or tobacco product'' after ''restricted devices'' each place it appears; and

(3) in subsection (b), by inserting ''tobacco product,'' after ''device,''.

(h) SECTION 705.—Section 705(b) (21 U.S.C. 375(b)) is amended by inserting ''tobacco products,'' after ''devices,''.

(i) SECTION 709.—Section 709 (21 U.S.C. 379) is amended by inserting ''or tobacco product'' after ''device''.

(j) SECTION 801.—Section 801 (21 U.S.C. 381) is amended—

(1) in subsection (a)—

(A) by inserting ''tobacco products,'' after ''devices,'' the first time it appears;

(B) by inserting ''or section 905(j)'' after ''section 510''; and

(C) by striking ''drugs or devices'' each time it appears and inserting ''drugs, devices, or tobacco products'';

(2) in subsection (e)(1), by inserting ''tobacco product,'' after ''device,''; and

(3) by adding at the end the following:

''(p)(1) Not later than 2 years 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.''.

(k) SECTION 1003.—Section 1003(d)(2)(C) (as redesignated by section 101(a)) is amended—

(1) by striking ''and'' after ''cosmetics,''; and

(2) inserting a comma and ''and tobacco products'' after ''devices''.

(l) EFFECTIVE DATE FOR NO-TOBACCO-SALE ORDER AMENDMENTS.—The amendments made by subsection (c), other than the amendment made by paragraph (2) of such subsection, shall take effect upon the issuance of guidance by the Secretary of Health and Human Services—

(1) defining the term ''repeated violation'', as used in section 303(f) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 333(f)) as amended by subsection (c), by identifying the number of violations of particular requirements over a specified period of time at a particular retail outlet that constitute a repeated violation;

(2) providing for timely and effective notice to the retailer of each alleged violation at a particular retail outlet and an expedited procedure for the administrative appeal of an alleged violation;

(3) 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;

(4) establishing a period of time during which, if there are no violations by a particular retail outlet, that outlet will not be considered to have been the site of repeated violations when the next violation occurs; and

(5) providing that good faith reliance on the presentation of a false government issued photographic identification that contains the bearer's 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—

(A) adopting and enforcing a written policy against sales to minors;

(B) informing its employees of all applicable laws;

(C) establishing disciplinary sanctions for employee noncompliance; and

(D) requiring its employees to verify age by way of photographic identification or electronic scanning device.

TITLE II—TOBACCO PRODUCT WARNINGS; CONSTITUENT AND SMOKE CONSTITUENT DISCLOSURE

SEC. 201. CIGARETTE LABEL AND ADVERTISING WARNINGS.

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 non-smokers'.
'WARNING: Quitting smoking now greatly reduces serious risks to your health'.

''(2) PLACEMENT; TYPOGRAPHY; ETC.—

''(A) IN GENERAL.—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. Except as provided in subparagraph (B), each label statement shall comprise at least the top 30 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 (b)(4).

''(B) FLIP-TOP BOXES.—For any cigarette brand package manufactured or distributed before January 1, 2000, which employs a flip-top style (if such packaging was used for that brand in commerce prior to June 21, 1997), the label statement required by paragraph (1) shall be located on the flip-top area of the package, even if such area is less than 25 percent of the area of the front panel. Except as provided in this paragraph, the provisions of this subsection shall apply to such packages.

''(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 is supplied to the retailer by a tobacco product manufacturer, importer, or distributor and is not altered by the retailer in a way that is material to the requirements of this subsection except that this paragraph shall not relieve a retailer of liability if the retailer sells or distributes tobacco products that are not labeled in accordance with 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) of this section.

''(2) TYPOGRAPHY, ETC.—Each label statement required by subsection (a) of this section 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 paragraph (4) of this subsection. 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 in the case of—

''(A) 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 or the text, format, and type sizes of any required tar, nicotine yield, or other constituent (including smoke constituent) disclosures, or to establish the text, format, and type sizes for any other disclosures required under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et. seq.). 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) of this subsection. 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.

''(5) MARKETING REQUIREMENTS.—

''(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 cigarettes 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 subparagraph (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.

''(6) APPLICABILITY TO RETAILERS.—This subsection applies 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 is not labeled in accordance with the requirements of this subsection.''.

SEC. 202. AUTHORITY TO REVISE CIGARETTE WARNING LABEL 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:

''(c) CHANGE IN REQUIRED 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 (21 U.S.C. 301 et seq.), 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.

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 is supplied to the retailer by a tobacco products manufacturer, importer, or distributor and that is not altered by the retailer unless the retailer offers for sale, sells, or distributes a smokeless tobacco product that is not labeled in accordance with 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) Each label statement required by subsection (a) in smokeless tobacco 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 yield shall—

''(A) comprise at least 20 percent of the area of the advertisement, and the warning area shall be delineated by a dividing line of contrasting color from the advertisement; and

''(B) 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 on a white background, or white on a black background, in an alternating fashion under the plan submitted under paragraph (3).

''(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 subparagraph (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 is not labeled in accordance with the requirements of this subsection.

''(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.''.

SEC. 205. AUTHORITY TO REVISE SMOKELESS TOBACCO PRODUCT WARNING LABEL STATEMENTS.

Section 3 of the Comprehensive Smokeless Tobacco Health Education Act of 1986 (15 U.S.C. 4402), as amended by section 203, 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 (21 U.S.C. 301 et seq.), if the Secretary finds that such a change would promote greater public understanding of the risks associated with the use of smokeless tobacco products.''.

SEC. 206. TAR, NICOTINE, AND OTHER SMOKE CONSTITUENT DISCLOSURE TO THE PUBLIC.

Section 4(a) of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1333 (a)), as amended by section 201, is further amended by adding at the end the following:

''(4)(A) 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.

''(B) Any differences between the requirements established by the Secretary under subparagraph (A) 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.

''(C) In addition to the disclosures required by subparagraph (A) of this paragraph, 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 (21 U.S.C. 301 et seq.).

''(D) This paragraph applies 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 sells or distributes tobacco products that are not labeled in accordance with the requirements of this subsection.''.

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. 921. LABELING, RECORDKEEPING, RECORDS INSPECTION.

''(a) ORIGIN LABELING.—The label, packaging, and shipping containers of tobacco products for introduction or delivery for introduction into interstate commerce shall bear the statement 'sale only allowed in the United States.'

''(b) REGULATIONS CONCERNING RECORDKEEPING FOR TRACKING AND TRACING.—

''(1) IN GENERAL.—Not later than 9 months after the date of enactment of the Family Smoking Prevention and Tobacco Control Act, 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.

''(d) KNOWLEDGE OF ILLEGAL TRANSACTION.—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 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.''.

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.

(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).

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

SECTION 1. CLARIFICATION OF REGULATIONS RELATING TO OVERTIME COMPENSATION.

Section 13 of the Fair Labor Standards Act of 1938 (29 U.S.C. 213) is amended by adding at the end the following:

''(k) Notwithstanding the provisions of subchapter II of chapter 5 and chapter 7 of title 5, United States Code (commonly referred to as the Administrative Procedures Act) or any other provision of law, any portion of the final rule promulgated on April 23, 2004, revising part 541 of title 29, Code of Federal Regulations, that exempts from the overtime pay provisions of section 7 any employee who would not otherwise be exempt if the regulations in effect on March 31, 2003 remained in effect, shall have no force or effect and that portion of such regulations (as in effect on March 31, 2003) that would prevent such employee from being exempt shall remain in effect. Notwithstanding the preceding sentence, the increased salary requirements provided for in such final rule at section 541.600 of such title 29, shall remain in effect.''.

Mr. FRIST. Madam President, I yield the floor.

The PRESIDING OFFICER. The Senator from Louisiana is recognized.

Ms. LANDRIEU. Madam President, I ask unanimous consent to speak for about 10 minutes.

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

Ms. LANDRIEU. Madam President, I am so pleased to be on the floor and to thank our leadership: First, Senator FRIST, our majority leader, from Tennessee; Senator DASCHLE, the minority leader; and Senator REID, who has worked so tirelessly today. Reasonable minds came together on some of these issues. I particularly thank the Senator from Oklahoma, Senator NICKLES, for working throughout the day with us on this very important amendment for the Guard and Reserve; and particularly, Senator KIT BOND, who was one of the leaders on the Republican side; Senator JEFF SESSIONS for his kind remarks today; Senator JEFFORDS, who signed the letter to the President; Senator NELSON of Florida and Senator AKAKA, who came to the floor; Senator MURRAY for her strong support of the amendment; Senator BOXER for being an original cosponsor of the amendment, along with Senator DURBIN and

Senator KERRY. There may be others I can mention in the next few minutes because this truly was a success for all of us and the Senate, for the Republican leadership and the Democratic leadership of the Senate, to be able to come to a reasonable agreement to pass a tax credit for members of the Guard and Reserve, to pass a significant tax credit for businesses in this country, particularly small businesses that are really struggling to make ends meet and are doing the patriotic thing.

Madam President, I had submitted this for the RECORD several days ago, so I will not repeat it. I call attention to the hundreds of businesses—potentially thousands—that will benefit directly from this tax credit, but most important, it is the guardsmen and reservists whose paychecks will continue, whose families will be supported, who will be the direct and most important beneficiaries of the agreement reached tonight. I thank my colleagues, and I will speak in more detail tomorrow about the benefits.

Because we worked together and kept working in good faith and because we kept them in our minds, the Senate tomorrow at some time will pass, by unanimous consent, according to the agreement just reached, a tax credit for businesses. It won't technically be in this huge bill I have been holding up for 3 days. As I started this discussion, there was nothing we could do to get it in this bill. The only thing that could have happened to get it in the bill is if we pass it, the President would veto it, send it back, and tell us to rewrite it. The chances of that happening were not good. So we negotiated the next best thing, which was passing a standalone tax credit for the Guard and Reserve out of the Senate again, as we have already done with 100 Members of the Senate—Republicans and Democrats—and sent to the House.

Now the focus will be on the House leadership. Now the focus will be on the House. Is the Republican leadership in the House going to stand up for the men and women in the Guard and Reserve? Are they going to include them or leave them out of their tax bill? That is something the House leadership will have to discuss.

I am so proud tonight of the Senators. Again, many Senators helped. I will go into more detail in the morning about that.

Let me make sure that I have included in the RECORD the Military Officers Association, representing 376,000 members. I will submit for the RECORD the Reserve Officers Association. In the morning, I will submit many other documents we have received from Active and Reserve military organizations for members of the military coalition thanking us for standing strong for them to get a tax credit for them. If anybody deserves a tax credit—and if we can afford $137 billion for many other interests in America—nobody deserves it more than the employers, particularly the small employers of under 500 or a thousand. That is not that small, but in the definition of small business, something under 500 is technically called a small business. In my State, we think of a 10- or 15-employee company as small. But particularly for those small- and medium-sized businesses that are doing the patriotic thing, keeping the paycheck whole for the Guard and Reserve while they are on the front line and also hiring replacements for them to run the factories, the businesses, the architectural firm, or drive a truck, et cetera.

So I am just as proud as I can be tonight to thank my colleagues for working so well together. It has been a pleasure particularly working with Senator DASCHLE, who has the patience of a saint on many of these issues and in the way he has negotiated with Senator FRIST to bring this to a good end.

I will yield back the remainder of my time tonight and, of course, reserve the right to speak again in the morning on this important subject.

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

The PRESIDING OFFICER (Mr. BENNETT). Without objection, it is so ordered.

Ms. LANDRIEU. Will the Senator yield for 30 seconds?

Mr. HARKIN. I will yield.

Ms. LANDRIEU. I would particularly like to thank the Senator from Iowa. There is a long list of Senators, but I need to particularly thank the Senator from Iowa, for the two of us have been on the floor together for the last 2 days. He has been very generous in terms of helping with this issue, and he is a cosponsor of this amendment as well. He has been a tremendous supporter.

The Senator from Iowa has also, our colleagues know, had other issues which he will speak about in a moment, very important to farmers, actually in my State as well as Iowa and States all over the Nation, but I would be remiss if I did not thank the Senator from Iowa who has been arguing, holding the floor, making our points so we could get our colleagues to focus on this issue, which has been done, and now we have a bill we can send to the House. So I thank the Senator.

Mr. HARKIN. I thank the Senator from Louisiana. Let me return the bouquet. I thank the Senator from Louisiana on behalf of all the friends I have who are reservists—I was a reservist once myself in my younger years—all the National Guard people and the employers, the small businesspeople who try to do their best. These people are called up. They go to Iraq. Many times they try to give them some compensation, but they are leaving their families behind, their kids, their communities, and all the Senator has been asking for is to treat them fairly and decently, to help these employers make up that difference in income, many of whom are trying to do their best. But let's face it, a lot of them are small businesses. They cannot do it.

I thank the Senator from Louisiana for standing up for small businesses, for standing up for our Guard and Reserve people who have given so much to this country, making sure they are treated equitably and fairly. I thank the Senator for doing this. This is an issue that has to be resolved, and again every guardsman and every Reserve person in the United States owes the Senator from Louisiana a great debt of thanks.

I have to say this: If I am ever in a foxhole someplace, I want the Senator from Louisiana on my side because I know I will never have to worry about my backside if the Senator from Louisiana is there. She has what we call real grit. I am proud of her and thank her for being here this weekend and for never backing down. I thank her for standing up for our people in uniform in this country who are in the Guard and the Reserves.

I also want to thank those on the Republican side, Leader FRIST and others, who have worked to try to get accommodations made and reasonable agreements worked out. This is a place where there must be compromise. It is not your way or my way all the time. It is trying to work out compromises, trying to work out reasonable solutions to things. I thank those on the other side of the aisle who have worked this weekend with us.

I especially want to also thank our leaders, Senator DASCHLE and Senator REID, again for their willingness to work hard to try and work out these agreements with the leadership on the other side.

These are contentious things, but we know that. Sometimes around here we are not the masters of our own fate. I know the administration comes in and they want things a certain way. Sometimes it is hard being a member of the majority party whose President is in the White House. It is tough. I know that because a lot of times we may want to do things one way and the White House wants it the other way and they make it very tough on Members of their party. I understand that. I have been there before.

People of good reason can come together and work together to work these issues out. I know people took me to task today on the other side of the aisle. That is all right. I do not mind that. We have been around this place a long time. I want people to know I am going to stand here and fight for my farmers. They do not have many people fighting for them. They are a minority in this country. We got through a good farm bill in 2002 and the President signed it, touted conservation, and now twice conservation has been invaded, taking the money out of

our farm program. It is not right to do it that way.

So I am glad that when we come back in November to finalize our appropriations bills for next year—we have a continuing resolution until November 20 so we have to come back to finish that. Under the agreement we worked out, there will be an instruction to the conferees to undo what we did on the omnibus, to right what we did here and to make the conservation program whole again. That can be done. It can be done in November and, quite frankly, not too much will be upset in 1 month. We can live with that. We will get it straightened out in November.

I am glad we have reached this kind of a resolution and we will come back in November and try to get things straightened out at that time.

I want to thank those who have worked so hard to reach this agreement. I guess, as it goes now, we will be finished tomorrow and people can get back to their homes and campaign.

I also want to publicly thank all of the people at the desk, the clerks, the reading clerks, our Parliamentarians and others, the floor people on both sides, Republican and Democrat. They have had to give up their family this weekend. I know that. I want to thank them publicly for being here and working long hours on Saturday, Saturday night, and Sunday. It is now 8 at night. They provide a tremendous public service on both sides of the aisle. I know a lot of times they could probably get a lot more done if we Senators were not around. The staff can work out things.

I also want to thank our reporters who are here. They have also worked long hours this weekend and given up their family time. I have to mention the pages, too. The pages probably had a nice weekend planned. We thank them for being here and permitting us to do our job.

These are things sometimes that take a long time to work out. We try our best and we have our debates. We go back and forth, but we could not do our job without all of these wonderful people. They do make the Senate a wonderful place in which to work. It is 20 years that I have spent here. I never would have imagined in my younger life I would have had such an opportunity or an honor to serve my constituents in Iowa, indeed all of the people in this country, as a Senator. All of you who work and labor here do not get much glory. Nobody ever writes about you and you probably do not get on television, you do not get to speak on the Senate floor like we do, but we could never do our job without you. I want you to know I appreciate each and every one of you, Republican, Democrat, and those of you who do not have a party who are here in a nonpartisan capacity. You do make this place function well, and I thank you for it. I thank you for letting us do our job on the weekend.

Mr. REID. Will the Senator yield?

Mr. HARKIN. I would be delighted to yield to my leader. I paid homage to him earlier and I will pay it again most respectfully. I cannot say enough good things about Senator REID's strength and character, about his own personal attributes of honesty and forthrightness. When Senator REID gives his word, go to the bank. One does not have to worry about it.

He has a tough job. He has to deal with us and then he has to deal with the other side and try to work out these agreements. These are very tough negotiations. I could not ask for a better friend, a better person, to negotiate and work things out and get these compromises made. I could not ask for a better friend and a better person to do it than Senator REID of Nevada.

I yield to the Senator.

Mr. REID. Through the Chair to the distinguished Senator from Iowa, I have a State that is rapidly growing. It has, as you know, the tourism interests and the mining, and we have some ranching. There is limited agriculture, but we have some. But the State of Iowa is agricultural based. It is hard for a lot of us who come from big cities to understand. Nevada is the most urban State in the Union, with Las Vegas and Reno making up about 90 percent of the population. So it is hard for a lot of us to understand the passion that someone like TOM HARKIN has for farming and farmers. It is hard for me to understand that. But I have come to learn the passion and the depth of feeling that the junior Senator from Iowa has about farmers and farming—agricultural matters.

I hope the people of Iowa have some understanding, which I know they do, about how you fight for farmers, family farmers. I have learned a lot about family farmers because of listening to the Senator talk. It is not only listening to him talk, it is how he talks. I think it is so good that we have in this body people like TOM HARKIN, who believe in something, who have a knowledge of agriculture, but not only is it a broad-brush knowing a lot about agriculture, you care about the people who are involved in it.

What we have gone through in the last few days—and when I say gone through, as I told Senator HARKIN as I was going home last night, I had a Harkin headache—I feel good being one of 100 here and knowing that I serve with people like TOM HARKIN who believes so deeply in a subject. Not only does he express, personally, his feelings, he wants everyone here to know.

When the history books are written about agriculture and what has happened legislatively with agriculture, TOM HARKIN's chapter in that book will be in bold print.

I don't know much about this program that Senator HARKIN feels so strongly about, but I was there when he got it done. And I know how good he felt about having accomplished this farming conservation. I have some understanding of what it is but not the knowledge that Senator HARKIN has—how he felt about this. When this was accomplished, it was like somebody hit a home run. I have had some legislative victories and I know how good it feels. And I know how bad it feels when someone tries to take that away from you. That is what has happened here, a legislative victory that is significantly important to the farmers of this country, in TOM HARKIN's mind. He proved to me that people were trying to take that away from him. And by taking it away from him, they were taking it away from American farmers.

Mr. HARKIN. That's right.

Mr. REID. So I say to my friend, Senator HARKIN, thank you very much for being a believer, for being a believer in something that is important to this country, family farms.

Mr. HARKIN. I thank my friend. I thank my friend for those very kind and overly generous words. I again say to Senator REID, you do me a great honor. I don't think there is any higher honor than to have someone that you respect and that you admire say those kinds of things. I hope the Senator from Nevada understands the depth of my feeling about him personally—personally and professionally. Personally, as just a good, decent, wonderful human being, someone who cares deeply about people and making our Government work for people, making sure that people have the same kind of opportunities we had when we were kids.

A young kid from Searchlight, NV, and a young kid from Cumming, IA, knowing what our parents were like, poor—we see the two things we have in common. We were both born in small houses in small towns to poor parents. But we had a country that gave us an opportunity.

I know the Senator feels very deeply that he wants to pass on to his kids, and his grandkids, a country that gives them the same kind of opportunities the country gave us; for the HARRY REIDS of today who are born in some little house in some unknown town someplace out in the middle of nowhere, that they, too, have the same opportunity that this HARRY REID had to succeed in America.

That is the kind of America I know the Senator wants to leave. That is why I admire him so much. He is just a great human being.

I am glad you are our assistant minority leader, hopefully our assistant majority leader in the next term.

I thank you for those kind words, and thanks for your words on behalf of our farmers. We couldn't have gotten where we are without your great help and your great leadership. Even though you may not have a lot of farmers in Nevada, you have a lot of farmers who are your friends from Iowa, the Midwest, Ohio, and everywhere else.

I thank you for that very much.

Mr. President, I understand I have some time tomorrow to speak further on the issue. I will at this time yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. FRIST. Mr. President, I ask unanimous consent that the order for the quorum call be dispensed with.

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

MORNING BUSINESS

Mr. FRIST. Mr. President, I ask unanimous consent that there now be a period of morning business with Senators speaking for up to 10 minutes each.

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

Mrs. DOLE. Mr. President, during my years in public service I have learned a great deal about the severe effects of hunger in our Nation and around the world. My passion for this issue has significantly grown over time, so much so that I chose the topic as the focus of my maiden speech in the Senate. My hope is to shine a light on the devastating plague of malnourishment and severe hunger in our country and around the world.

October 16 is World Food Day, which was established 25 years ago by the Food and Agriculture Organization of the United Nations. Since its inception, the day has been recognized annually in more than 150 countries and I am proud to share my support today.

In truth, hunger affects millions of individuals across the globe. I know this to be true from my previous years of public service and my time at the Red Cross where I saw first hand the devastation of hunger. That is why I have made it a mission to fight this battle not only in our country, where I believe we can have a hunger free America, but around the world, where the issues of hunger so often become a useful strategy in developing relations with other governments and their people.

As a leader in agricultural production, the United States has long recognized its responsibility to assist in alleviating world hunger through food donations, financial aid, and technical assistance. As many of you know, the United States, the world's leading provider of food assistance, began providing food aid in the 1920s. That is why I am involved in the McGovern-Dole program which builds off of this important and proud tradition.

The McGovern-Dole program was named in honor of two former U.S. Senators, Senators George McGovern and Bob Dole, who worked tirelessly on behalf of U.S. school feeding, and more recently, for a global food for education program. The major objectives of the program are to reduce hunger and improve literacy and access to primary education, especially for girls.

The focus is on low-income countries striving to ensure an education for all children. The World Food Program estimates that there are more than 300 million chronically hungry school-age children in poor countries. Of these, perhaps 170 million go off to school hungry. Another 130 million children—60 percent of them girls—do not attend school.

An estimated 2.2 million beneficiaries received meals and take home rations under the fiscal year 2003 program, which is still ongoing in some countries. These resources, together with the $50 million Congress appropriated for the fiscal year 2004 program are reaching an additional 1.5 million beneficiaries. Given the program's success and high demand, the Bush administration requested an increase above the 2004 funding levels for fiscal year 2005, which I supported. After working with the Senate Appropriations Committee, I am proud to report that the bill voted out of committee includes a 50-percent increase above the fiscal year 2004 levels, bringing the fiscal year 2005 funding levels for McGovern-Dole to $100 million.

Reducing hunger and improving literacy are global challenges, and meeting those challenges will require a global effort. We have experienced some marked successes in our efforts to involve other donors in helping achieve our goal of global school feeding and the McGovern-Dole International Food for Education and Child Nutrition Program has made a positive contribution to those efforts to combat hunger and illiteracy.

It is my belief that this program will do more than just feed those in desperate need of food and improve the nutrition of children. It will bring hope and opportunity through education to some of the world's poorest children, improving their future and making the world a safer place for all of us.

Mr. President, on World Food Day, I congratulate those who are fighting the battle to end hunger, and ask my fellow Americans to stand with me in this vital and important effort.

Mr. INHOFE. Mr. President, like all of my colleagues I have been watching the presidential campaign with great interest, and I have noticed that the Democratic nominee has been making comments, particularly in the Midwest, which can not be reconciled with his record here in the Senate.

The Democratic nominee says coal should play an important role in America's energy future. He wants to ''forge new ways to draw cleaner power from coal.'' But his record tells a different story—his votes and policies are aggressively anti-coal. On every issue of importance to coal and coal miners, he has sided with environmental extremists, who, like the Democratic nominee, view coal as a ''dirty energy source'' that must be eradicated.

Last year, the Democratic nominee voted for the Climate Stewardship Act, S. 139, a bill very similar to the Kyoto Protocol, which would destroy the coal industry. Unions for Jobs and the Environment, a group that includes the United Mine Workers, called S. 139 ''a bad idea,'' and believe that passage of S. 139 ''would be tantamount to adoption of the Kyoto Protocol.''

According to the Energy Information Administration, the bill causes steep declines in coal use and production and eliminates thousands of coal jobs. S. 139 would: cut coal-fired electricity by 80 percent; cut bituminous coal production by 69 percent; destroy 56,000 coal industry jobs; and cause existing coal plants in West Virginia, Ohio, Michigan, and Pennsylvania to shut down. ''In the S.139 case, a large proportion of existing coal capacity is projected to be retired. It is simply not economical to continue operating these plants.''

Along with running mate JOHN EDWARDS, the Democratic nominee is a cosponsor of the Clean Power Act. This legislation would impose heavy burdens on coal, forcing many plants to switch to natural gas or shut down.

This bill is so hostile to coal that the Ohio legislature, by an overwhelming bipartisan margin, passed a resolution condemning it. The resolution states:

> The carbon dioxide emissions cap in the bill needlessly eliminates a significant component of electric generation in the United States by effectively removing coal as a fuel source. The bill will cause electric utilities to switch from coal to natural gas because the electric utilities would no longer have the option to economically generate electricity from coal. . .

The United Mine Workers, the Utility Workers, the Boilermakers, and other labor unions oppose the bill. In testimony before the committee I chair, the Environment and Public Works Committee, Eugene Trisko of the United Mine Workers stated:

> The union is strongly opposed to efforts to use the Clean Air Act as a vehicle for regulating greenhouse gas emissions . . . Limits on carbon emissions would require switching from coal to natural gas or other higher-cost energy sources, with potentially devastating impacts on the economies of coal-producing states.

Further, according to independent analysis, the bill: cuts coal-fired electric generation by 55 percent and coal production by 50 percent, EIA analysis of the Clean Power Act; destroys 32,000 coal jobs; and forces many coal-fired power plants to shut down, ''resulting in substantial economic impacts.''

The Democratic nominee has routinely criticized President Bush for rejecting Kyoto. As he said last year, ''Instead of renegotiating the Kyoto Treaty to improve it, he simply repudiated it.'' And the Vice Presidential nominee, when asked in February by the San Francisco Chronicle whether he would support Kyoto, responded with a direct, ''Yes,'' and said his running mate agreed with him.

The Democratic nominee says the U.S. should ''reengage with the international community'' to forge a new global warming agreement, but the question remains: What would the agreement look like? And how could any agreement calling for strict reductions in $C0_2$ emissions not harm coal?

Now they say they oppose Kyoto, describing its timetables and mandates

as ''infeasible.'' ''The Democratic nominees believe that the Kyoto Protocol is not the answer. The near-term emission reductions it would require of the United States are infeasible, while the long-term obligations imposed on all nations are too little to solve the problem.''

But the Democratic nominee's environmental group supporters know where he stands on Kyoto. ''We don't have doubts that this issue is at the top of his to-do list when elected, or his re-do list,'' said Betsy Loyless of the League of Conservation Voters, which endorsed him for president. Saying, ''there is no doubt in our mind that he will re-engage in Kyoto.''

Further, the Democratic nominee tried to save Kyoto in 2000 during negotiations with the EU. Quoting from a UPI article at the time:

Instead, one senator who accompanied him to Vietnam, John Kerry (D-MA), entered the fray. Senator Kerry, an aggressive promoter of the United States, was ubiquitously huddled over notepads and scribbling aides, attempting to develop U.S. offers on certain mechanisms that its counterparts would accept.

Not only did he try to save Kyoto, but he opposed efforts by the Clinton administration to ease U.S. compliance with the treaty. According to an AP article:

U.S. Sen. John Kerry, a Massachusetts Democrat who has been involved in environmental legislation, said he also had problems with the U.S. position. Instead of cutting its emissions by 7 percent as agreed at Kyoto, he said, the sinks proposal would allow the United States to pump at least 1 percent more greenhouse gases than it did in 1990. ''Some sinks clearly must be counted, but they should be in line with the spirit of the Kyoto agreement,'' he said. ''Any retrenchment diminishes our credibility on other proposals'' and raises ''understandable suspicion that they are mere loopholes.''

According to a Grist Magazine article this year:

The Democratic nominee is no casual Kyoto detractor—he has attended a number of Kyoto conferences over the years and tried to push negotiations forward, and he has a long record of consistently voting in favor of policy measures to curb global warming, from stricter CAFE standards to mandatory greenhouse-gas regulations.

I want everyone to understand, Kyoto would eliminate coal use. ''Under the Kyoto Protocol, coal consumption would be phased out over the period 2010 to 2020. The result would be massive dislocations in coal producing areas. . .''

Kyoto would eliminate nearly 50,000 jobs in Ohio; 40,000 jobs in Pennsylvania; and 22,000 jobs in Michigan.

Kyoto would be disastrous for West Virginia coal. According to a study by West Virginia University, Kyoto would cause a 25.5 percent decline in coal mining; destroy 42,800 jobs; reduce state GDP by over $3 billion; and reduce per capita income by $393.

The West Virginia and Ohio legislatures passed resolutions rejecting Kyoto and preventing State agencies from implementing any part of the treaty.

According to his website, the Democratic nominee says he will spend $10 billion over the next decade on clean coal technologies. But as the above demonstrates, you can't have clean coal without coal. Moreover, his policies would obstruct installation of clean coal technologies, placing further burdens on the industry in meeting new Clean Air Act requirements.

The Democratic nominee opposes President Bush's New Source Review reforms that allow utilities to upgrade their facilities with clean, energy efficient technologies, avoiding the complex, burdensome, and environmentally counterproductive permitting process unleashed by the Clinton EPA.

He supports lawsuits filed by environmental groups now blocking President Bush's NSR reforms.

He even joined in the junior Senator from New York's anti-NSR reform legal brief.

He voted last year for his running mate's amendment to delay President Bush's reforms and vows to ''immediately reverse the Bush-Cheney rollbacks of the Nation's Clean Air Program.''

Most critically, returning to the Clinton NSR program would thwart installation of clean coal technologies. According to the National Coal Council, uncertainty over the Clinton NSR policy ''has had a direct and chilling effect on all maintenance and efficiency improvements and clean coal technology installations at existing power plants.''

The Democratic nominee also missed the vote on last year's energy bill, and later said that had he been present, he would have voted against it. Yet the bill included several provisions and substantial funding for clean coal technologies: Authorizes $200 million annually for fiscal years 2004 through 2012 for clean coal research and coal-based gasification technologies; authorizes funding to the Secretary of Energy for loans, and authorizes the Secretary to make loan guarantees for a variety of clean coal projects around the country; directs the Secretary of Energy to carry out a program to facilitate production and generation of coal-based power and the installation of pollution-control equipment; and creates an investment tax credit for facilities retrofitted, repowered or replaced with clean coal technology.

''Where we see a beautiful mountaintop, George Bush sees a strip mine.'' This is the Democratic nominee's view of mountaintop mining, which employs 15,000 people and provides $21.8 million in revenue for education in West Virginia, according to a study by Marshall University.

In 1999, he voted against the senior Senator from West Virginia's amendment to overturn a Federal court decision that threatened to end mountaintop mining in West Virginia.

According to the senior Senator from West Virginia said the goal of his amendment was ''to allow for the continuation of our coal industry and the jobs it provides while better protecting the mountains and hollows of the state we love.''

I would point out that the United Mine Workers of America strongly supported the amendment.

He even joined forces with then Vice President Al Gore, who, after initially supporting the amendment, threatened to veto any appropriations bill that included it.

A recent Federal court decision, issued by U.S. District Judge Joseph Goodwin a Clinton appointee, halted 11 mountaintop mining projects in southern West Virginia. The economic impacts, according to West Virginia economists, could be devastating. The question is: where does the Democratic nominee stand on this decision?

Economist Michael Hicks and Cal Kent, former dean of Marshall University's business college, said the ruling could slow the permitting process for mountaintop mining by 2 years, resulting in a 40 percent decline in coal production.

''That decline the economists predicted, could lead to layoffs, stunted investment in West Virginia—particularly in the southern Coalfields region—and less revenue for the state. And the impact could be felt as soon as this fiscal year,'' they said.

The Democratic nominee has a unique view of the Clean Air Act. According to him, when the act was passed in 1970, there was a consensus that existing coal-fired power plants had a remaining life-span of 10 to 15 years. Beyond that time, according to this view, they would be forced to install costly new pollution controls or simply shut down.

Nearly 46 percent of coal-fired capacity in Ohio was built before 1970. In West Virginia, nearly one-third of capacity was built prior to 1970. Additionally, over 75 percent of coal-fired capacity in Ohio and West Virginia was built between 1970 and 1974.

According to the Democratic nominee, these plants must install exorbitantly expensive pollution controls, which would force many plants to close, or simply shut down altogether, causing massive economic dislocations, job losses, and higher energy costs in Ohio and West Virginia.

According to the NSR legal brief, which the Democratic nominee joined, the Clean Air Act ''created a limited and qualified grace period within which existing plants could continue to operate. Accordingly, the 1970 CAA set up a simple choice for existing sources: either upgrade to new source standards or shut down.''

In conclusion, Kerry-Edwards is the most anti-coal presidential ticket in American history. Yes, even worse than Clinton-Gore.

(At the request of Mr. DASCHLE, the following statement was ordered to be printed in the RECORD.)

JUSTICE FOR ALL ACT

• Mr. BIDEN. Mr. President, I rise today to commend the Senate for its actions yesterday in passing the Justice for All Act of 2004, bipartisan, bicameral legislation I sponsored along with Senator HATCH and others. And I commend the other body for swiftly acting in passing the same legislation last evening. I hope the bill will now be signed into law without delay. This is one of the most important pieces of legislation I have ever introduced and one of the most important things the Senate will consider during the 108th Congress.

As I have said many times, DNA has become the guilty man's worst enemy and the innocent man's best friend. It is a two-edged sword which we must use to both put criminals behind bars and exonerate anyone who has been wrongfully convicted. I started looking at the issue of improved prosecution of sexual assault crimes almost two decades ago when I began drafting the Violence Against Women Act. This legislation is the next step, a way to connect the dots between the extraordinary strides in DNA technology and my commitment to ending violence against women. We must ensure that justice delayed is not justice denied.

For 3 years now, I have called on Congress to enact this important legislation. In 2002, I introduced with Senator SPECTER, S. 2513, the DNA Sexual Assault Justice Act of 2002. That Senate unanimously passed that bill during the 107th Congress, but the House failed to act. That bill grew out of a series of hearing I chaired in the Judiciary Committee which focused on the crisis involving untested rape kits sitting in police evidence bins around the country, each one containing the key to solving a sexual assault crime and putting a rapist behind bars. My hearings included testimony estimating that there were 300,000 to 500,000 untested rape kits nationwide.

In some of the most moving testimony I have heard in my 32 years in this body, we listened to Debbie Smith describe the horror of being the victim of sexual assault, followed by an additional 6 years of terror while awaiting the apprehension of her rapist. As I will discuss in a moment, the key to Debbie's road to recovery lay in an untested rape kit connected to her assault. Finally, that rape kit was tested, her assailant was identified and convicted, and she began to find closure.

In followup to the Senate's passage of S. 2513, I introduced at the start of the 108th Congress with Senator SPECTER S. 152, the DNA Sexual Assault Justice Act of 2003. That legislation built upon S. 2513 from the prior Congress and was again joined by over 20 bipartisan cosponsors. The DNA Sexual Assault Justice Act of 2003 provided the hundreds of millions of Federal dollars desperately needed by state and local crime labs around the country to clear out the backlog of hundreds of thousands of untested DNA evidence kits from sexual assaults and other violent crimes.

An important provision of S. 152 allowed the Justice Department to bring ''John Doe/DNA'' indictments against an unknown or unnamed perpetrator of sexual assault in any case where a DNA sample from the suspect was recovered from a crime scene. This innovative procedure would allow prosecutors to investigate and indict sex crimes, even where the victim could not identify her assailant, thus preventing the statute of limitations from expiring before the perpetrator could be identified and charged. My ''John Doe/DNA'' indictment provision became law in 2003 as part of the Protect Act/Amber Alert Act, S. 151/H.R. 1104.

Last year, Senator HATCH and I introduced S. 1700, the Advancing Justice Through DNA Technology Act of 2003, which contained most of the key elements of S. 152. We were joined by Senators SPECTER, LEAHY, DEWINE and FEINSTEIN and dozens of other cosponsors in this legislation. For the last year, disagreements over a specific title of S. 1700, the Innocence Protection Act, held up consideration of the bill. Members from both sides of the aisle were supportive of my DNA Sexual Assault Justice Act, which was included in other titles of the bill. I am pleased that we finally reached a compromise on the very important title addressing post-conviction DNA testing, which cleared the way to consider the entire bill. We have also added into the legislation important victims' right provisions, resulting in the newly named Justice for All Act of 2004.

The bill we passed yesterday, a combination of the Advancing Justice Through DNA Technology and the victims' rights legislation, harnesses the power of DNA to give prompt justice to victims of sexual assault crimes and to free the wrongly convicted. This bill takes every component of DNA technology and makes it accessible and more useful to Federal, State and local law enforcement, to prosecutors and defense attorneys, to medical personnel and to victims of crime.

Promoting and supporting DNA technology as a crime-fighting tool is not a new endeavor for me. A provision of my 1994 Crime Bill created the Combined DNA Index System, CODIS, which is an electronic database of DNA profiles, much like the FBI's fingerprint database. CODIS includes two kinds of DNA information—convicted offender DNA samples and DNA from crime scenes. CODIS uses the two indexes to generate investigative leads in crimes where biological evidence is recovered from the scene. In essence, CODIS facilitates the DNA match. And once that match is made, a crime is solved because of the incredible accuracy and durability of DNA evidence.

Mr. President, 99.9 percent—that is how accurate DNA evidence is. Mr. President, 1 in 30 billion—those are the odds someone else committed a crime if a suspect's DNA matches evidence at the crime scene. Twenty or 30 years—that is how long DNA evidence from a crime scene lasts. Just ten years ago DNA analysis of evidence could have cost thousands of dollars and taken months; now testing one sample costs $40 and can take days. Ten years ago forensic scientists needed blood the size of a bottle cap, now DNA testing can be done on a sample the size of a pinhead. The changes in DNA technology are remarkable, and mark a sea change in how we can fight crime, particularly sexual assault crimes.

The FBI reports that since 1998 the national DNA database has helped put away violent criminals in over 9,000 investigations in 50 states. How? By matching the DNA crime evidence to the DNA profiles of offenders. Individual success stories of DNA ''cold hits'' in sexual assault cases make these numbers all too real. During just the last several months, DNA evidence pinpointed a suspect in 3 rapes in Miami, Florida, caused a man to be charged in a 20-year-old Missouri rape case, proved critical in convicting a New York man accused of committing 9 rapes over a decade, helped charge a man in a 28-year-old San Francisco rape and homicide case, and resulted in the charges against a Virginia man in a 23-year-old rape case. All across this country, rapists and murderers are getting caught for crimes which are often years or even decades old. Crime solved, streets safer.

Undoubtedly, DNA matching by comparing evidence gathered at the crime scene with offender samples entered on the national DNA database has proven to be the deciding factor in solving stranger sexual assault cases—it has revolutionized the criminal justice system, and brought closure and justice for victims. A laboratory expert testified that Virginia has a 48 percent hit rate because the State collects samples from all convicted felons and aggressively analyzes crime scene evidence with no backlog. This means that almost 1 out of every 2 violent crimes could be solved by the national DNA database.

In light of the past successes and the future potential of DNA evidence, the reported number of untested rape kits and other crime scene evidence waiting in police warehouses are simply shocking—the Justice Department recently estimated the number to be as many as 500,000. One woman in particular has reminded State and Federal lawmakers that we cannot ignore even one rape kit sitting on a shelf gathering dust. That woman is Debbie Smith. In 1989, Mrs. Smith was taken from her home and brutally raped. There were no known suspects, and Mrs. Smith lived in fear of her attacker's return. Six years later, the Virginia crime laboratory discovered a DNA match between the rape scene evidence and a state prisoner's DNA sample. That ''cold hit'' gave Mrs. Smith her first moment of real security and closure, and since then she has traveled the country to

advocate on behalf of assault victims and champion the use of DNA to fight sexual assault.

The bill approved yesterday provides over $755 million over 5 years to eliminate the backlog in rape kits and other crime scene evidence, eliminate the backlog of convicted offender samples awaiting DNA testing, and improve state laboratory capacity to conduct DNA testing. I am pleased that the backlog elimination grant program in this legislation is entitled, ''The Debbie Smith DNA Backlog Grants.'' It is a fitting tribute.

The Justice for All Act of 2004 is a natural extension to the Violence Against Women Act, which required the Attorney General to evaluate and recommend standards for training and practice for licensed health care professionals performing sexual assault forensic exams. So I knew that any DNA bill aimed at ending sexual assault must include resources for sexual forensic examiners. This bill provides $500 million in training grants to help ensure that nurses, police and paramedics know how to best collect and preserve DNA evidence in sexual assault cases, and to help local law enforcement agencies put the DNA profiles of convicted felons into state and national databases.

The bill also expands the CODIS database by mandating the inclusion of DNA samples from all convicted federal felons, and by permitting states to include the DNA samples from suspects arrested for and charged with a crime. At the same time, our bill retains important provisions to expunge DNA samples from the database for those whose convictions are overturned or against whom criminal charges are dropped. The bill also contains tough new penalties for the improper use or disclosure of DNA samples.

Today's bill also makes two small, but important, amendments to the Violence Against Women Act. First, it amends the law to include legal assistance for victims of dating violence, and it amends the eligibility criteria for discretionary programs so that tribal domestic violence and sexual assault coalitions can directly receive grants funds, including those funds unreleased from past fiscal years.

I am also gratified that this legislation includes the Innocence Protection Act, which I cosponsored last Congress with Senator LEAHY. This section will immeasurably improve the administration of justice in our legal system, particularly where justice is most important, and where we can least afford to make mistakes—imposition of the death penalty. Those who support the death penalty also have a duty to ensure that it is fairly administered. The advent of DNA testing has provided us with a wealth of opportunities to make certain that we are prosecuting the right people. This legislation makes post-conviction testing to federal inmates who assert that they did not commit the crime for which they have been imprisoned. It also incentivizes States to take similar measures to ensure that individuals have a proper opportunity to prove their innocence. It also mandates proper preservation of DNA evidence so that the DNA can be tested if appropriate.

As for competent counsel in death penalty cases, nobody can look me in the eye and tell me that our system for representation in capital cases works as it should. This bill will take a big step toward fixing that by providing money for grants to States to improve their systems of representation, on both the prosecution and defense side, in capital cases.

In closing, I would be remiss if I did not pause to thank some of the many people who have helped bring about the introduction of this bill. In particular, I wish to thank Senator HATCH, the chairman the Judiciary Committee, for devoting so much time and effort to work with me in developing this legislation, along with his chief counsel Bruce Artim and his counsels Brett Tolman and Mike Volkov. I also commend Senator LEAHY, the distinguished ranking member of the committee, and his chief counsel Bruce Cohen and senior counsel Julie Katzman, who have worked tirelessly on this bill, and is the principal sponsor of the Innocence Protection Act. I also thank our other principal Senate sponsors, including Senator SPECTER and his chief counsel David Brog; Senator DEWINE, and his counsel Rob Steinbuch; and Senator FEINSTEIN and her chief counsel David Hantman.

I also commend our colleagues in the other body who led the fight in the House of Representatives to enact this important legislation. Their efforts were instrumental in achieving the final bill both bodies passed yesterday. Specifically, I commend Representative SENSENBRENNER, the chairman of the House Judiciary Committee, and his staff, including Phil Kiko, Jay Apperson, and Katy Crooks. I also thank Ranking Member CONYERS and his staff, including Perry Applebaum and Bobby Vassar. I also thank Representative DELAHUNT for his leadership, and his counsels Mark Agrast and Christine Leonard.

Finally, I thank my own staff who have worked diligently over the last 3 years to pass this important legislation, including Louisa Terrell, Jonathan Meyer, and Neil MacBride.

Mr. President, yesterday's action by Congress were a long time coming, and I join my cosponsors in thanking our colleagues for passing this legislation. I now hope the President will quickly sign this bill into law, so that we can finally tackle the untested rape kits and start bringing hope and closure to victims of sexual assault.

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. DeWINE (for himself, Mr. KENNEDY, and Mr. JEFFORDS):

S. 2974. A bill to protect the public health by providing the Food and Drug Administration with certain authority to regulate tobacco products; considered and passed.

By Mr. HARKIN (for himself and Mr. KENNEDY):

S. 2975. A bill to amend the Fair Labor Standards Act of 1938 to clarify regulations relating to overtime compensation; considered and passed.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Ms. MURKOWSKI (for herself, Mr. STEVENS, Mr. GRASSLEY, Mr. CORNYN, Mr. CHAMBLISS, Mr. ALLEN, Mr. CAMPBELL, and Mr. WARNER):

S. Res. 455. A resolution supporting the goals of Red Ribbon Week; considered and agreed to.

By Ms. STABENOW (for herself and Ms. SNOWE):

S. Res. 456. A resolution designating October 14, 2004, as ''Lights On Afterschool! Day''; considered and agreed to.

By Mr. REED (for himself, Mr. BOND, Ms. MIKULSKI, Ms. COLLINS, Mr. SARBANES, Mr. BIDEN, Mrs. BOXER, Mr. BREAUX, Mr. CARPER, Mr. CHAFEE, Mrs. CLINTON, Mr. CONRAD, Mr. CORZINE, Mr. DAYTON, Mr. DEWINE, Mr. DODD, Mr. DORGAN, Mr. DURBIN, Mr. FEINGOLD, Mrs. FEINSTEIN, Mr. GRAHAM of Florida, Mr. HAGEL, Mr. JEFFORDS, Mr. KENNEDY, Mr. KOHL, Ms. LANDRIEU, Mr. LAUTENBERG, Mr. LEVIN, Mr. LIEBERMAN, Mrs. LINCOLN, Mr. LUGAR, Mrs. MURRAY, Mr. NELSON of Nebraska, Mr. NICKLES, Mr. SANTORUM, Mr. SCHUMER, Mr. SMITH, Ms. SNOWE, Ms. STABENOW, Mr. REID, Mr. TALENT, and Mr. WYDEN):

S. Res. 457. A resolution designating the week of October 24, 2004, through October 30, 2004, as ''National Childhood Lead Poisoning Prevention Week''; considered and agreed to.

By Mr. BINGAMAN (for himself, Mr. MCCAIN, Mr. HOLLINGS, and Mr. BROWNBACK):

S. Res. 458. A resolution congratulating the SpaceShipOne team for achieving a historic milestone in human space flight; considered and agreed to.

By Mr. DURBIN (for himself and Mr. ALEXANDER):

S. Res. 459. A resolution designating November 2004 as ''American Music Month'' to celebrate and honor music performance, education, and scholarship in the United States; considered and agreed to.

By Mr. SESSIONS (for himself and Mr. SHELBY):

S. Res. 460. A resolution honoring the young victims of the Sixteenth Street Baptist Church bombing recognizing the historical significance of the tragic event, and commending the efforts of law enforcement personnel to bring the perpetrators of this crime to justice on the occasion of its 40th anniversary; considered and agreed to.

By Mr. DOMENICI (for himself, Mr. DODD, Mr. COCHRAN, Mr. DORGAN, Mr. BUNNING, Mr. CONRAD, Mr. CAMPBELL, Mr. ROCKEFELLER, Mr. WARNER, Mr. KERRY, Mr. FITZGERALD, Ms. LANDRIEU, Mr. HAGEL, Mr. KENNEDY, Mr. INHOFE, Mr. BIDEN, Mr. DEWINE, Mr. JOHNSON, Mr. LOTT, Mr. AKAKA,

Mr. ALEXANDER, Mr. DURBIN, Mr. BROWNBACK, Mr. SESSIONS, Mr. LEVIN, Mrs. DOLE, Mr. SARBANES, Mr. TALENT, Ms. STABENOW, Ms. MURKOWSKI, Mr. BAYH, Mr. ALLEN, Mr. LIEBERMAN, and Mr. ENZI):

S. Res. 461. A resolution designating the week beginning of October 17, 2004, as ''National Character Counts Week''; considered and agreed to.

By Mr. HAGEL (for himself, Mr. LUGAR, Mr. BIDEN, Mr. LEAHY, Mr. MCCAIN, Mr. SUNUNU, and Mr. DODD):

S. Res. 462. A resolution recognizing the significant achievement of the people and Government of Afghanistan since the Emergency Loya Jirga was held in June 2002 in establishing the foundation and means to hold presidential elections on October 9, 2004; considered and agreed to.

By Mr. LOTT:

S. Res. 463. A resolution authorizing the printing of a revised edition of the Senate Rules and Manual; considered and agreed to.

ADDITIONAL COSPONSORS

S. 423

At the request of Ms. MURKOWSKI, her name was added as a cosponsor of S. 423, a bill to promote health care coverage parity for individuals participating in legal recreational activities or legal transportation activities.

S. 491

At the request of Mr. REID, the name of the Senator from Alaska (Ms. MURKOWSKI) was added as a cosponsor of S. 491, a bill to expand research regarding inflammatory bowel disease, and for other purposes.

S. 556

At the request of Ms. MURKOWSKI, her name was added as a cosponsor of S. 556, a bill to amend the Indian Health Care Improvement Act to revise and extend that Act.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. DEWINE (for himself, Mr. KENNEDY, and Mr. JEFFORDS):

S. 2974. A bill to protect the public health by providing the Food and Drug Administration with certain authority to regulate tobacco products; considered and passed.

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

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

S. 2974

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 ''Family Smoking Prevention and Tobacco Control Act''.

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 6,500,000 of today's children from becoming regular, daily smokers, saving over 2,000,000 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 2001, the tobacco industry spent more than $11,000,000,000 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 advertising than adults, they smoke the most advertised 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, 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 Act.

(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 plays 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 insuring 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 approved in advance of marketing, and to require that the evidence relied on to support approval of these products is rigorous.

SEC. 3. PURPOSE.

The purposes of this Act 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;

(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 Act (or an amendment made by this Act) 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 Act (or an amendment made by this Act) 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.

SEC. 5. SEVERABILITY.

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

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:

''(nn)(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—

''(A) a product in the form of conventional food (including water and chewing gum), a product represented for use as or for use in a conventional food, or a product that is intended for ingestion in capsule, tablet, softgel, or liquid form; or

''(B) an article that is approved or is regulated as a drug by the Food and Drug Administration.

''(3) The products described in paragraph (2)(A) shall be subject to chapter IV or chapter V of this Act and the articles described in paragraph (2)(B) shall be subject to chapter V of this Act.

''(4) A tobacco product may not be marketed in combination with any other article or product regulated under this Act (including a drug, biologic, food, cosmetics, 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 907 as sections 1001 through 1007; and

(3) by inserting after section 803 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, 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, or packaging, logo, registered trademark or brand name, identifiable pattern of colors, or any combination of such attributes.

''(3) CIGARETTE.—The term 'cigarette' has the meaning given that term by section 3(1)

of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1332(1)), but also 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 for cigarettes 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 (15 U.S.C. 1332(2)).

''(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 TRIBE.—The term 'Indian tribe' has the meaning given such term in section 4(e) of the Indian Self Determination and Education Assistance Act (25 U.S.C. 450b(e)).

''(10) LITTLE CIGAR.—The term 'little cigar' has the meaning given that term by section 3(7) of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1332(7)).

''(11) 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.

''(12) 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.

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

''(14) ROLL-YOUR-OWN TOBACCO.—The term 'roll-your-own tobacco' means any tobacco 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.

''(15) 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.

''(16) 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.

''(17) STATE.—The term 'State' means any State of the United States and, for purposes of this chapter, includes 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.

''(18) TOBACCO PRODUCT MANUFACTURER.—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 cigarette or smokeless tobacco product for sale or distribution in the United States.

''(19) 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 shall be regulated by the Secretary under this chapter and shall not be subject to the provisions of chapter V, unless—

''(1) such products are intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease (within the meaning of section 201(g)(1)(B) or section 201(h)(2)); or

''(2) a claim is made for such products under section 201(g)(1)(C) or 201(h)(3);

other than modified risk tobacco products approved in accordance with section 911.

''(b) APPLICABILITY.—This chapter shall apply to all tobacco products subject to the regulations referred to in section 102 of the Family Smoking Prevention and Tobacco Control Act, 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 the Family Smoking Prevention and Tobacco Control Act, shall be construed to affect the Secretary's authority over, 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 any other provision of this subparagraph, 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.

''(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.

''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) 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;

''(5)(A) it is required by section 910(a) to have premarket approval and does not have an approved application in effect;

''(B) it is in violation of the order approving such an application; or

''(6) 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

''(7) 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 921(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 any State 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. 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 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 (15 U.S.C. 52 through 55).

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

''(a) REQUIREMENT.—Not later than 6 months after the date of enactment of the Family Smoking Prevention and Tobacco Control Act, each tobacco product manufacturer or importer, or agents thereof, shall submit to the Secretary the following information:

''(1) 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(a)(4) of the Federal Cigarette Labeling and Advertising Act.

''(3) 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 2 years after the date of enactment of this chapter, the manufacturer, importer, or agent shall comply with regulations promulgated under section 915 in reporting information under this paragraph, where applicable.

''(4) All documents developed after the date of enactment of the Family Smoking Prevention and Tobacco Control Act 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 12 months after the date of enactment of the Family Smoking Prevention and Tobacco Control Act, the Secretary shall establish 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.

''(c) REGISTRATION OF 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 in any State registered with the Secretary under this section shall be subject to inspection under section 704, 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) FOREIGN ESTABLISHMENTS SHALL REGISTER.—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) of this section 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 has 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) 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 June 1, 2003, 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 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 June 1, 2003, that is in compliance with the requirements of this Act; 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 JUNE 1, 2003 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 June 1, 2003, and prior to the date that is 15 months after the date of enactment of the Family Smoking Prevention and Tobacco Control Act shall be submitted to the Secretary not later than 15 months after such date of enactment.

''(3) EXEMPTIONS.—

''(A) IN GENERAL.—The Secretary may by regulation, exempt from the requirements of this subsection 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 authorized for sale 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 9 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 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 non-users 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.

''(e) GOOD MANUFACTURING PRACTICE REQUIREMENTS.—

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

''(A) IN GENERAL.—The Secretary may, 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, as prescribed in such regulations, to assure that the public health is protected and that the tobacco product is in compliance with this chapter. Good manufacturing practices may include 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 advisory committee a reasonable time to make its recommendation with respect to proposed regulations under subparagraph (A); and

''(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.

''(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, controls, and facilities 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 period ending 3 years after 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 without regard to section 3324(a) and (b) of title 31, United States Code, and section 5 of title 41, United States Code.

''SEC. 907. TOBACCO PRODUCT STANDARDS.

''(a) IN GENERAL.—

''(1) SPECIAL RULE FOR CIGARETTES.—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 paragraph.

''(2) REVISION OF TOBACCO PRODUCT STANDARDS.—The Secretary may revise the tobacco product standards in paragraph (1) in accordance with subsection (b).

''(3) TOBACCO PRODUCT STANDARDS.—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. This finding shall be determined with respect to the risks and benefits to the population as a whole, including users and non-users 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.

''(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 the reduction of 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 (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); and

''(C) shall, where appropriate, require the use and prescribe the form and content of labeling for the proper use of the tobacco product.

''(5) PERIODIC RE-EVALUATION 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) ESTABLISHMENT OF STANDARDS.—

''(1) NOTICE.—

''(A) 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.

''(B) REQUIREMENTS OF NOTICE.—A notice of proposed rulemaking for the establishment or amendment of a tobacco product standard for a tobacco product shall—

''(i) set forth a finding with supporting justification that the tobacco product standard is appropriate for the protection of the public health;

''(ii) set forth proposed findings with respect to the risk of illness or injury that the tobacco product standard is intended to reduce or eliminate; and

''(iii) invite interested persons to submit an existing tobacco product standard for the tobacco product, including a draft or proposed tobacco product standard, for consideration by the Secretary.

''(C) STANDARD.—Upon a determination by the Secretary that an additive, constituent (including smoke constituent), or other component of the product that is the subject of the proposed tobacco product standard is harmful, it shall be the burden of any party challenging the proposed standard to prove that the proposed standard will not reduce or eliminate the risk of illness or injury.

''(D) 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.

''(E) CONSIDERATION BY SECRETARY.—The Secretary shall consider all 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 non-tobacco 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, and shall issue the standard if the Secretary determines that the standard would be appropriate for the protection of the public health.

''(F) COMMENT.—The Secretary shall provide for a comment period of not less than 60 days.

''(2) PROMULGATION.—

''(A) IN GENERAL.—After the expiration of the period for comment on a notice of proposed rulemaking published under paragraph (1) respecting a tobacco product standard and after consideration of such comments and any report from the Tobacco Products Scientific Advisory Committee, the Secretary shall—

''(i) promulgate a regulation establishing a tobacco product standard and publish in the Federal Register findings on the matters referred to in paragraph (1); or

''(ii) publish a notice terminating the proceeding for the development of the standard together with the reasons for such termination.

''(B) 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.

''(3) POWER RESERVED TO CONGRESS.—Because of the importance of a decision of the Secretary to issue a regulation establishing a tobacco product standard—

''(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,

Congress expressly reserves to itself such power.

''(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 paragraphs (1) and (2)(B), 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) REFERENCE TO ADVISORY COMMITTEE.—The Secretary may—

''(A) on the Secretary's own initiative, refer a proposed regulation for the establishment, amendment, or revocation of a tobacco product standard; or

''(B) upon the request of an interested person which demonstrates good cause for referral and which is made before the expiration of the period for submission of comments on such proposed regulation,

refer such proposed regulation 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. 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. The Tobacco Products Scientific Advisory Committee shall, within 60 days after the referral of a proposed regulation 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. A copy of such report and recommendation shall be made public by the Secretary.

''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) of this section.

''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 June 1, 2003; 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 June 1, 2003.

''(2) PREMARKET APPROVAL REQUIRED.—

''(A) NEW PRODUCTS.—Approval under this section of an application for premarket approval for any new tobacco product is required unless—

''(i) the manufacturer has submitted a report under section 905(j); and

''(ii) 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 June 1, 2003; and

''(II)(aa) is in compliance with the requirements of this Act; or

''(bb) is exempt from the requirements of section 905(j) pursuant to a regulation issued under section 905(j)(3).

''(B) APPLICATION TO CERTAIN POST JUNE 1, 2003 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 June 1, 2003, and prior to the date that is 15 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 15-month period, until 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 terms 'substantially equivalent' or 'substantial equivalence' mean, 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 for premarket approval 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) REFERENCE 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 approval of 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 paragraph (2) of such subsection, shall—

''(i) issue an order approving the application if the Secretary finds that none of the grounds for denying approval specified in paragraph (2) of this subsection applies; or

''(ii) deny approval of the application 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 approving an application for a tobacco product may require as a condition to such approval 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 APPROVAL.—The Secretary shall deny approval of an application for a tobacco product 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, compliance with which is a condition to approval of the application, 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 place such application in approvable 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 approval of a tobacco product 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 an advisory committee, and after due notice and opportunity for informal hearing to the holder of an approved application for a tobacco product, issue an order withdrawing approval of the application 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 approved, 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 approved, 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 the application was approved, 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 approval of 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 approval of the application 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 subsection (e).

''(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 approved application 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 approval of the application approved under this section. 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 approval of 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 approval.

''(2) ACCESS TO RECORDS.—Each person required under this section to maintain records, and each person in charge or 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 approval of an application filed pursuant to subsection (d) 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—

''(A) 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) 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 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 an advisory committee any application submitted under this subsection.
''(2) RECOMMENDATIONS.—Not later than 60 days after the date an application is referred to an advisory committee under paragraph (1), the advisory committee shall report its recommendations on the application to the Secretary.
''(g) APPROVAL.—
''(1) MODIFIED RISK PRODUCTS.—Except as provided in paragraph (2), the Secretary shall approve an application for a modified risk tobacco product filed under this section 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 approve an application for a tobacco product that has not been approved as a modified risk tobacco product pursuant to paragraph (1) if the Secretary makes the findings required under this paragraph and determines that the applicant has demonstrated that—
''(i) the approval of the application 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)(2) is limited to an explicit or implicit representation that such tobacco product or its smoke contains 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 anticipated in subsequent studies.
''(B) ADDITIONAL FINDINGS REQUIRED.—In order to approve an application 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 anticipated 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) approval of 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 APPROVAL.—
''(i) IN GENERAL.—Applications approved 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.—Applications approved under this paragraph shall be conditioned on the applicant's agreement to conduct post-market surveillance and studies and to submit to the Secretary the results of such surveillance and studies to determine the impact of the application approval on consumer perception, behavior, and health and to enable the Secretary to review the accuracy of the determinations upon which the approval was based in accordance with a protocol approved by the Secretary.
''(iii) ANNUAL SUBMISSION.—The results of such post-market 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 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 APPROVAL.—
''(1) MODIFIED RISK PRODUCTS.—The Secretary shall require for the approval of an application 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 approval of an application 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.—The Secretary shall limit an approval under subsection (g)(1) for a specified period of time.
''(5) ADVERTISING.—The Secretary may require that an applicant, whose application has been approved under this subsection, comply with requirements relating to advertising and promotion of the tobacco product.
''(i) POSTMARKET SURVEILLANCE AND STUDIES.—
''(1) IN GENERAL.—The Secretary shall require that an applicant under subsection (g)(1) conduct post market surveillance and studies for a tobacco product for which an application has been approved to determine the impact of the application approval on consumer perception, behavior, and health, to enable the Secretary to review the accuracy of the determinations upon which the approval 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 post-market 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 APPROVAL.—The Secretary, after an opportunity for an informal hearing, shall withdraw the approval of an application under this section 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 approval of the application 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 (i); or

''(5) the applicant failed to meet a condition imposed under subsection (h).

''(k) CHAPTER IV OR V.—A product approved in accordance with this section 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) establish minimum standards for scientific studies needed prior to approval to show that a substantial reduction in morbidity or mortality among individual tobacco users is likely;

''(B) include validated biomarkers, intermediate clinical endpoints, and other feasible outcome measures, as appropriate;

''(C) establish minimum standards for post market 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; and

''(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.

''(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 for which the applicant seeks approval as a modified risk tobacco product under this section.

''(m) DISTRIBUTORS.—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 for approval 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 (15 U.S.C. 45(a)) and shall be considered a violation of a rule promulgated under section 18 of that Act (15 U.S.C. 57a).

''(b) COORDINATION.—With respect to the requirements of section 4 of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1333) and section 3 of the Comprehensive Smokeless Tobacco Health Education Act of 1986 (15 U.S.C. 4402)—

''(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. CONGRESSIONAL REVIEW PROVISIONS.

''In accordance with section 801 of title 5, United States Code, Congress shall review, and may disapprove, any rule under this chapter that is subject to section 801. This section and section 801 do not apply to the regulations referred to in section 102 of the Family Smoking Prevention and Tobacco Control Act.

''SEC. 916. REGULATION REQUIREMENT.

''(a) TESTING, REPORTING, AND DISCLOSURE.—Not later than 24 months after the date of enactment of the Family Smoking Prevention and Tobacco Control Act, the Secretary, acting through the Commissioner of the Food and Drug Administration, shall promulgate regulations under this Act that meet the requirements of subsection (b).

''(b) CONTENTS OF RULES.—The regulations promulgated under subsection (a) shall require testing and reporting of tobacco product constituents, ingredients, and additives, including smoke constituents, by brand and sub-brand that the Secretary determines should be tested to protect the public health. The regulations 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 Food and Drug Administration shall have the authority under this chapter to conduct or to require the testing, reporting, or disclosure of tobacco product constituents, including smoke constituents.

''SEC. 917. PRESERVATION OF STATE AND LOCAL AUTHORITY.

''(a) IN GENERAL.—

''(1) PRESERVATION.—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.—Except as provided in paragraph (1) and subparagraph (B), 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 approval, adulteration, misbranding, labeling, registration, good manufacturing standards, or reduced risk 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 554(b)(4) of title 5, United States Code, shall be treated as 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. 918. TOBACCO PRODUCTS SCIENTIFIC ADVISORY COMMITTEE.

''(a) ESTABLISHMENT.—Not later than 1 year after the date of enactment of the Family Smoking Prevention and Tobacco Control Act, the Secretary shall establish a 11-member advisory committee, to be known as the 'Tobacco Products Scientific 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 the 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 in the tobacco manufacturing industry; and

''(v) 1 individual as a representative of the interests of the tobacco growers.

''(B) NONVOTING MEMBERS.—The members of the committee appointed under clauses (iv) and (v) of subparagraph (A) shall serve as consultants to those described in clauses (i) through (iii) of subparagraph (A) and shall be nonvoting representatives.

''(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 of the Advisory Committee 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 for level 4 of 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 (5 U.S.C.
App.) 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. 919. DRUG PRODUCTS USED TO TREAT TOBACCO DEPENDENCE.

The Secretary shall consider—

''(1) at the request of the applicant, designating nicotine replacement products as fast track research and approval products within the meaning of section 506;

''(2) direct the Commissioner to consider approving the extended use of nicotine replacement products (such as nicotine patches, nicotine gum, and nicotine lozenges) for the treatment of tobacco dependence;

''(3) review and consider the evidence for additional indications for nicotine replacement products, such as for craving relief or relapse prevention; and

''(4) consider—

''(A) relieving companies of premarket burdens under section 505 if the requirement is redundant considering other nicotine replacement therapies already on the market; and

''(B) time and extent applications for nicotine replacement therapies that have been approved by a regulatory body in a foreign country and have marketing experience in such country.

''SEC. 920. USER FEE.

''(a) ESTABLISHMENT OF QUARTERLY USER FEE.—The Secretary shall assess a quarterly user fee with respect to every quarter of each fiscal year commencing fiscal year 2004, calculated in accordance with this section, upon each manufacturer and importer of tobacco products subject to this chapter.

''(b) FUNDING OF FDA REGULATION OF TOBACCO PRODUCTS.—The Secretary shall make user fees collected pursuant to this section available to pay, in each fiscal year, for the costs of the activities of the Food and Drug Administration related to the regulation of tobacco products under this chapter.

''(c) ASSESSMENT OF USER FEE.—

''(1) AMOUNT OF ASSESSMENT.—Except as provided in paragraph (4), the total user fees assessed each year pursuant to this section shall be sufficient, and shall not exceed what is necessary, to pay for the costs of the activities described in subsection (b) for each fiscal year.

''(2) ALLOCATION OF ASSESSMENT BY CLASS OF TOBACCO PRODUCTS.—

''(A) IN GENERAL.—Subject to paragraph (3), the total user fees assessed each fiscal year with respect to each class of importers and manufacturers shall be equal to an amount that is the applicable percentage of the total costs of activities of the Food and Drug Administration described in subsection (b).

''(B) APPLICABLE PERCENTAGE.—For purposes of subparagraph (A) the applicable percentage for a fiscal year shall be the following:

''(i) 92.07 percent shall be assessed on manufacturers and importers of cigarettes;

''(ii) 0.05 percent shall be assessed on manufacturers and importers of little cigars;

''(iii) 7.15 percent shall be assessed on manufacturers and importers of cigars other than little cigars;

''(iv) 0.43 percent shall be assessed on manufacturers and importers of snuff;

''(v) 0.10 percent shall be assessed on manufacturers and importers of chewing tobacco;

''(vi) 0.06 percent shall be assessed on manufacturers and importers of pipe tobacco; and

''(vii) 0.14 percent shall be assessed on manufacturers and importers of roll-your-own tobacco.

''(3) DISTRIBUTION OF FEE SHARES OF MANUFACTURERS AND IMPORTERS EXEMPT FROM USER FEE.—Where a class of tobacco products is not subject to a user fee under this section, the portion of the user fee assigned to such class under subsection (d)(2) shall be allocated by the Secretary on a pro rata basis

among the classes of tobacco products that are subject to a user fee under this section. Such pro rata allocation for each class of tobacco products that are subject to a user fee under this section shall be the quotient of—

''(A) the sum of the percentages assigned to all classes of tobacco products subject to this section; divided by

''(B) the percentage assigned to such class under paragraph (2).

''(4) ANNUAL LIMIT ON ASSESSMENT.—The total assessment under this section—

''(A) for fiscal year 2004 shall be $85,000,000;

''(B) for fiscal year 2005 shall be $175,000,000;

''(C) for fiscal year 2006 shall be $300,000,000; and

''(D) for each subsequent fiscal year, shall not exceed the limit on the assessment imposed during the previous fiscal year, as adjusted by the Secretary (after notice, published in the Federal Register) to reflect the greater of—

''(i) the total percentage change that occurred in the Consumer Price Index for all urban consumers (all items; United States city average) for the 12-month period ending on June 30 of the preceding fiscal year for which fees are being established; or

''(ii) the total percentage change for the previous fiscal year in basic pay under the General Schedule in accordance with section 5332 of title 5, United States Code, as adjusted by any locality-based comparability payment pursuant to section 5304 of such title for Federal employees stationed in the District of Columbia.

''(5) TIMING OF USER FEE 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 subsection (f) during each quarter of each fiscal year. Such notifications shall occur not earlier than 3 months prior to the end of the quarter for which such assessment is made, and payments of all assessments shall be made not later than 60 days after each such notification.

''(d) DETERMINATION OF USER FEE BY COMPANY MARKET SHARE.—

''(1) IN GENERAL.—The user fee to be paid by each manufacturer or importer of a given class of tobacco products shall be determined in each quarter by multiplying—

''(A) such manufacturer's or importer's market share of such class of tobacco products; by

''(B) the portion of the user fee amount for the current quarter to be assessed on manufacturers and importers of such class of tobacco products as determined under subsection (e).

''(2) NO FEE IN EXCESS OF MARKET SHARE.—No manufacturer or importer of tobacco products shall be required to pay a user fee in excess of the market share of such manufacturer or importer.

''(e) DETERMINATION OF VOLUME OF DOMESTIC SALES.—

''(1) IN GENERAL.—The calculation of gross domestic volume of a class of tobacco product by a manufacturer or importer, and by all manufacturers and importers as a group, shall be made by the Secretary using information provided by manufacturers and importers pursuant to subsection (f), as well as any other relevant information provided to or obtained by the Secretary.

''(2) MEASUREMENT.—For purposes of the calculations under this subsection and the information provided under subsection (f) by the Secretary, gross domestic volume shall be measured by—

''(A) in the case of cigarettes, the number of cigarettes sold;

''(B) in the case of little cigars, the number of little cigars sold;

''(C) in the case of large cigars, the number of cigars weighing more than 3 pounds per thousand sold; and

''(D) in the case of other classes of tobacco products, in terms of number of pounds, or fraction thereof, of these products sold.

''(f) MEASUREMENT OF GROSS DOMESTIC VOLUME.—

''(1) IN GENERAL.—Each manufacturer and importer of tobacco products shall submit to the Secretary a certified copy of each of the returns or forms described by this paragraph that are required to be filed with a Government agency on the same date that those returns or forms are filed, or required to be filed, with such agency. The returns and forms described by this paragraph are those returns and forms related to the release of tobacco products into domestic commerce, as defined by section 5702(k) of the Internal Revenue Code of 1986, and the repayment of the taxes imposed under chapter 52 of such Code (ATF Form 500.24 and United States Customs Form 7501 under currently applicable regulations).

''(2) PENALTIES.—Any person that knowingly fails to provide information required under this subsection or that provides false information under this subsection shall be subject to the penalties described in section 1003 of title 18, United States Code. In addition, such person may be subject to a civil penalty in an amount not to exceed 2 percent of the value of the kind of tobacco products manufactured or imported by such person during the applicable quarter, as determined by the Secretary.

''(h) EFFECTIVE DATE.—The user fees prescribed by this section shall be assessed in fiscal year 2004, based on domestic sales of tobacco products during fiscal year 2003 and shall be assessed in each fiscal year thereafter.''.

SEC. 102. INTERIM FINAL RULE.

(a) CIGARETTES AND SMOKELESS TOBACCO.—

(1) IN GENERAL.—Not later than 30 days after the date of enactment of this Act, the Secretary of Health and Human Services shall publish in the Federal Register an interim final rule regarding cigarettes and smokeless tobacco, which is hereby deemed to be in compliance with the Administrative Procedures Act and other applicable law.

(2) CONTENTS OF RULE.—Except as provided in this subsection, the interim 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;

(B) strike Subpart C—Labeling and section 897.32(c); and

(C) become effective not later than 1 year after the date of enactment of this Act.

(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 the Administrative Procedures Act.

(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 the Administrative Procedures Act, the regulation promulgated pursuant to this section.

(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 entitled ''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 entitled ''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 entitled ''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 entitled ''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), by striking ''515(f), or 519'' and inserting ''515(f), 519, or 909'';

(5) in subsection (g), by inserting ''tobacco product,'' after ''device,'';

(6) in subsection (h), by inserting ''tobacco product,'' after ''device,'';

(7) in subsection (j), by striking ''708, or 721'' and inserting ''708, 721, 904, 905, 906, 907, 908, 909, or section 921(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)(2).'';

(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)(8), or 908, or condition prescribed under section 903(b)(6)(B)(ii)(II);

''(B) to furnish any notification or other material or information required by or under section 519, 520(g), 904, 909, or section 921; 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 ''device'' each time that it appears; and

(13) by adding at the end the following:

''(aa) The sale of tobacco products in violation of a no-tobacco-sale order issued under section 303(f).

''(bb) The introduction or delivery for introduction into interstate commerce of a tobacco product in violation of section 911.

''(cc)(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.

''(dd) The charitable distribution of tobacco products.

''(ee) The failure of a manufacturer or distributor to notify the Attorney General of their knowledge of tobacco products used in illicit trade.''.

(c) SECTION 303.—Section 303 (21 U.S.C. 333(f)) is amended in subsection (f)—

(1) by striking the subsection heading and inserting the following:

''(f) CIVIL PENALTIES; NO-TOBACCO-SALE ORDERS.—'';

(2) in paragraph (1)(A), by inserting ''or tobacco products'' after ''devices'';

(3) by redesignating paragraphs (3), (4), and (5) as paragraphs (4), (5), and (6), and inserting after paragraph (2) the following:

''(3) 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).'';

(4) in paragraph (4) as so redesignated—

(A) 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'' and inserting ''penalty, or upon whom a no-tobacco-order is to be imposed,'';

(B) 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

(C) by adding at the end, the following:

''(D) The Secretary may compromise, modify, or terminate, with or without conditions, any no-tobacco-sale order.'';

(5) in paragraph (5) as so redesignated—

(A) by striking ''(3)(A)'' as redesignated, and inserting ''(4)(A)'';

(B) by inserting ''or the imposition of a no-tobacco-sale order'' after ''penalty'' the first 2 places it appears; and

(C) by striking ''issued.'' and inserting ''issued, or on which the no-tobacco-sale order was imposed, as the case may be.''; and

(6) in paragraph (6), as so redesignated, by striking ''paragraph (4)'' each place it appears and inserting ''paragraph (5)''.

(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: '', (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 ''device'' each place it appears; and

(4) in subsection (g)(2)(A), by inserting ''or tobacco product'' after ''device'' each place it appears.

(e) SECTION 702.—Section 702(a) (21 U.S.C. 372(a)) is amended—

(1) by inserting ''(1)'' after ''(a)''; and

(2) by adding at the end thereof the following:

''(2) For a tobacco product, to the extent feasible, the Secretary shall contract with the States in accordance with paragraph (1) to carry out inspections of retailers in connection with the enforcement of this Act.''.

(f) SECTION 703.—Section 703 (21 U.S.C. 373) is amended—

(1) by inserting ''tobacco product,'' after ''device,'' each place it appears; and

(2) by inserting ''tobacco products,'' after ''devices,'' each place it appears.

(g) SECTION 704.—Section 704 (21 U.S.C. 374) is amended—

(1) in subsection (a)(1)(A), by inserting ''tobacco products,'' after ''devices,'' each place it appears;

(2) in subsection (a)(1)(B), by inserting ''or tobacco product'' after ''restricted devices'' each place it appears; and

(3) in subsection (b), by inserting ''tobacco product,'' after ''device,''.

(h) SECTION 705.—Section 705(b) (21 U.S.C. 375(b)) is amended by inserting ''tobacco products,'' after ''devices,''.

(i) SECTION 709.—Section 709 (21 U.S.C. 379) is amended by inserting ''or tobacco product'' after ''device''.

(j) SECTION 801.—Section 801 (21 U.S.C. 381) is amended—

(1) in subsection (a)—

(A) by inserting ''tobacco products,'' after ''devices,'' the first time it appears;

(B) by inserting ''or section 905(j)'' after ''section 510''; and

(C) by striking ''drugs or devices'' each time it appears and inserting ''drugs, devices, or tobacco products'';

(2) in subsection (e)(1), by inserting ''tobacco product,'' after ''device,''; and

(3) by adding at the end the following:

''(p)(1) Not later than 2 years 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.''.

(k) SECTION 1003.—Section 1003(d)(2)(C) (as redesignated by section 101(a)) is amended—

(1) by striking ''and'' after ''cosmetics,''; and

(2) inserting a comma and ''and tobacco products'' after ''devices''.

(l) EFFECTIVE DATE FOR NO-TOBACCO-SALE ORDER AMENDMENTS.—The amendments made by subsection (c), other than the amendment made by paragraph (2) of such subsection, shall take effect upon the issuance of guidance by the Secretary of Health and Human Services—

(1) defining the term ''repeated violation'', as used in section 303(f) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 333(f)) as amended by subsection (c), by identifying the number of violations of particular requirements over a specified period of time at a particular retail outlet that constitute a repeated violation;

(2) providing for timely and effective notice to the retailer of each alleged violation at a particular retail outlet and an expedited procedure for the administrative appeal of an alleged violation;

(3) 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;

(4) establishing a period of time during which, if there are no violations by a particular retail outlet, that outlet will not be considered to have been the site of repeated violations when the next violation occurs; and

(5) providing that good faith reliance on the presentation of a false government issued photographic identification that contains the bearer's 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—

(A) adopting and enforcing a written policy against sales to minors;

(B) informing its employees of all applicable laws;

(C) establishing disciplinary sanctions for employee noncompliance; and

(D) requiring its employees to verify age by way of photographic identification or electronic scanning device.

TITLE II—TOBACCO PRODUCT WARNINGS; CONSTITUENT AND SMOKE CONSTITUENT DISCLOSURE

SEC. 201. CIGARETTE LABEL AND ADVERTISING WARNINGS.

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 non-smokers'.

'WARNING: Quitting smoking now greatly reduces serious risks to your health'.

''(2) PLACEMENT; TYPOGRAPHY; ETC.—

''(A) IN GENERAL.—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. Except as provided in subparagraph (B), each label statement shall comprise at least the top 30 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 (b)(4).

''(B) FLIP-TOP BOXES.—For any cigarette brand package manufactured or distributed before January 1, 2000, which employs a flip-top style (if such packaging was used for that brand in commerce prior to June 21, 1997), the label statement required by paragraph (1) shall be located on the flip-top area of the package, even if such area is less than 25 percent of the area of the front panel. Except as provided in this paragraph, the provisions of this subsection shall apply to such packages.

''(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 is supplied to the retailer by a tobacco product manufacturer, importer, or distributor and is not altered by the retailer in a way that is material to the requirements of this subsection except that this paragraph shall not relieve a retailer of liability if the retailer sells or distributes tobacco products that are not labeled in accordance with 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) of this section.

''(2) TYPOGRAPHY, ETC.—Each label statement required by subsection (a) of this section 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 paragraph (4) of this subsection. 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 in the case of—

''(A) 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 or the text, format, and type sizes of any required tar, nicotine yield, or other constituent (including smoke constituent) disclosures, or to establish the text, format, and type sizes for any other disclosures required under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et. seq.). 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) of this subsection. 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.

''(5) MARKETING REQUIREMENTS.—

''(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 cigarettes 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 subparagraph (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.

''(6) APPLICABILITY TO RETAILERS.—This subsection applies 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 is not labeled in accordance with the requirements of this subsection.''.

SEC. 202. AUTHORITY TO REVISE CIGARETTE WARNING LABEL 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:

''(c) CHANGE IN REQUIRED 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 (21 U.S.C. 301 et seq.), 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.

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 is supplied to the retailer by a tobacco products manufacturer, importer, or distributor and that is not altered by the retailer unless the retailer offers for sale, sells, or distributes a smokeless tobacco product that is not labeled in accordance with 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) Each label statement required by subsection (a) in smokeless tobacco 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 yield shall—

''(A) comprise at least 20 percent of the area of the advertisement, and the warning area shall be delineated by a dividing line of contrasting color from the advertisement; and

''(B) 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 on a white background, or white on a black background, in an alternating fashion under the plan submitted under paragraph (3).

''(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 subparagraph (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 is not labeled in accordance with the requirements of this subsection.

''(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.''.

SEC. 205. AUTHORITY TO REVISE SMOKELESS TOBACCO PRODUCT WARNING LABEL STATEMENTS.

Section 3 of the Comprehensive Smokeless Tobacco Health Education Act of 1986 (15 U.S.C. 4402), as amended by section 203, 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 (21 U.S.C. 301 et seq.), if the Secretary finds that such a change would promote greater public understanding of the risks associated with the use of smokeless tobacco products.''.

SEC. 206. TAR, NICOTINE, AND OTHER SMOKE CONSTITUENT DISCLOSURE TO THE PUBLIC.

Section 4(a) of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1333 (a)), as amended by section 201, is further amended by adding at the end the following:

''(4)(A) 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.

''(B) Any differences between the requirements established by the Secretary under subparagraph (A) 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.

''(C) In addition to the disclosures required by subparagraph (A) of this paragraph, 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 (21 U.S.C. 301 et seq.).

''(D) This paragraph applies 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 sells or distributes tobacco products that are not labeled in accordance with the requirements of this subsection.''.

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. 921. LABELING, RECORDKEEPING, RECORDS INSPECTION.

''(a) ORIGIN LABELING.—The label, packaging, and shipping containers of tobacco products for introduction or delivery for introduction into interstate commerce shall bear the statement 'sale only allowed in the United States.'

''(b) REGULATIONS CONCERNING RECORDKEEPING FOR TRACKING AND TRACING.—

''(1) IN GENERAL.—Not later than 9 months after the date of enactment of the Family Smoking Prevention and Tobacco Control Act, 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.

''(d) KNOWLEDGE OF ILLEGAL TRANSACTION.—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 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.''.

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.

(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).

By Mr. HARKIN (for himself and Mr. KENNEDY):

S. 2975. A bill to amend the Fair Labor Standards Act of 1938 to clarify regulations relating to overtime compensation; considered and passed.

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

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

S. 2975

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

SECTION 1. CLARIFICATION OF REGULATIONS RELATING TO OVERTIME COMPENSATION.

Section 13 of the Fair Labor Standards Act of 1938 (29 U.S.C. 213) is amended by adding at the end the following:

''(k) Notwithstanding the provisions of subchapter II of chapter 5 and chapter 7 of title 5, United States Code (commonly referred to as the Administrative Procedures Act) or any other provision of law, any portion of the final rule promulgated on April 23, 2004, revising part 541 of title 29, Code of Federal Regulations, that exempts from the overtime pay provisions of section 7 any employee who would not otherwise be exempt if the regulations in effect on March 31, 2003 remained in effect, shall have no force or effect and that portion of such regulations (as in effect on March 31, 2003) that would prevent such employee from being exempt shall remain in effect. Notwithstanding the preceding sentence, the increased salary requirements provided for in such final rule at section 541.600 of such title 29, shall remain in effect.''.

SUBMITTED RESOLUTIONS

SENATE RESOLUTION 455—SUPPORTING THE GOALS OF RED RIBBON WEEK

Ms. MURKOWSKI (for herself, Mr. STEVENS, Mr. GRASSLEY, Mr. CORNYN, Mr. CHAMBLISS, Mr. ALLEN, Mr. CAMPBELL, and Mr. WARNER) submitted the following resolution; which was considered and agree to:

S. RES. 455

Whereas the Governors and Attorneys General of the States, the National Family Partnership, Parent Teacher Associations, Boys and Girls Clubs of America, and more than 100 other organizations throughout the United States annually cosponsor Red Ribbon Week during the week of October 23 through October 31;

Whereas a purpose of the Red Ribbon Campaign is to commemorate the service of Enrique ''Kiki'' Camarena, a Drug Enforcement Administration special agent who died in the line of duty while engaged in the battle against illicit drugs;

Whereas Red Ribbon Week is nationally recognized and celebrated, helping to preserve Special Agent Camarena's memory and further the cause for which he gave his life;

Whereas the objective of Red Ribbon Week is to promote drug-free communities through drug prevention efforts, education, parental involvement, and communitywide support;

Whereas drug and alcohol abuse contributes to domestic violence and sexual assaults, and places the lives of children at risk;

Whereas drug abuse is 1 of the major challenges our Nation faces in securing a safe and healthy future for our families and children; and

Whereas parents, youth, schools, businesses, law enforcement agencies, religious institutions, service organizations, senior citizens, medical and military personnel, sports teams, and individuals throughout the United States demonstrate their commitment to drug-free, healthy lifestyles by wearing and displaying red ribbons during this weeklong celebration: Now, therefore, be it

Resolved, That the Senate—

(1) supports the goals of Red Ribbon Week;

(2) encourages children and teens to choose to live a drug-free life; and

(3) encourages all people of the United States to promote drug-free communities and to participate in drug prevention activities to show support for healthy, productive, drug-free lifestyles.

SENATE RESOLUTION 456—DESIGNATING OCTOBER 14, 2004, AS ''LIGHTS ON AFTERSCHOOL! DAY''

Ms. STABENOW (for herself and Ms. SNOWE) submitted the following resolution; which was considered and agreed to:

S. RES. 456

Whereas quality afterschool programs provide safe, challenging, engaging, and fun learning experiences to help children and youth develop their social, emotional, physical, cultural, and academic skills;

Whereas quality afterschool programs support working families by ensuring their children are safe and productive after the regular school day ends;

Whereas quality afterschool programs build stronger communities by involving students, parents, business leaders, and adult volunteers in the lives of young people, thereby promoting positive relationships among children, youth, families, and adults;

Whereas quality afterschool programs engage families, schools, and diverse community partners in advancing the welfare of children;

Whereas ''Lights On Afterschool!'', a national celebration of afterschool programs on October 14, 2004, promotes the critical importance of quality afterschool programs in the lives of children, their families, and their communities;

Whereas more than 28,000,000 children in the United States have parents who work outside the home, and 14,300,000 children have no place to go after school; and

Whereas many afterschool programs across the country are facing funding shortfalls so severe that they are forced to close their doors and turn off their lights: Now, therefore, be it

Resolved, That the Senate—

(1) designates October 14, 2004, as ''Lights On Afterschool! Day''; and

(2) requests that the President issue a proclamation calling on the communities of the Nation to engage in innovative afterschool programs and activities that ensure the lights stay on and the doors stay open for all children after school.

SENATE RESOLUTION 457—DESIGNATING THE WEEK OF OCTOBER 24, 2004, THROUGH OCTOBER 30, 2004, AS ''NATIONAL CHILDHOOD LEAD POISONING PREVENTION WEEK''

Mr. REED (for himself, Mr. BOND, Ms. MIKULSKI, Ms. COLLINS, Mr. SARBANES, Mr. BIDEN, Mrs. BOXER, Mr. BREAUX, Mr. CARPER, Mr. CHAFEE, Mrs. CLINTON, Mr. CONRAD, Mr. CORZINE, Mr. DAYTON, Mr. DEWINE, Mr. DODD, Mr. DORGAN, Mr. DURBIN, Mr. FEINGOLD, Mrs. FEINSTEIN, Mr. GRAHAM of Florida, Mr. HAGEL, Mr. JEFFORDS, Mr. KENNEDY, Mr. KOHL, Ms. LANDRIEU, Mr. LAUTENBERG, Mr. LEVIN, Mr. LIEBERMAN, Mrs. LINCOLN, Mr. LUGAR, Mrs. MURRAY, Mr. NELSON of Nebraska, Mr. NICKLES, Mr. SANTORUM, Mr. SCHUMER, Mr. SMITH, Ms. SNOWE, Ms. STABENOW, Mr. REID, Mr. TALENT, and Mr. WYDEN) submitted the following resolution; which was considered and agreed to:

S. RES. 457

Whereas lead poisoning is a leading environmental health hazard to children in the United States;

Whereas according to the Centers for Disease Control and Prevention, 434,000 preschool children in the United States have harmful levels of lead in their blood;

Whereas lead poisoning may cause serious, long-term harm to children, including reduced intelligence and attention span, behavior problems, learning disabilities, and impaired growth;

Whereas children from low-income families are 8 times more likely to be poisoned by lead than are children from high-income families;

Whereas children may be poisoned by lead in water, soil, or consumable products;

Whereas children most often are poisoned in their homes through exposure to lead particles when lead-based paint deteriorates or is disturbed during home renovation and repainting; and

Whereas lead poisoning crosses all barriers of race, income, and geography: Now, therefore, be it

Resolved, That the Senate—

(1) designates the week of October 24, 2004, through October 30, 2004, as ''National Childhood Lead Poisoning Prevention Week''; and

(2) requests that the President issue a proclamation calling upon the people of the United States to observe such week with appropriate programs and activities.

SENATE RESOLUTION 458—CONGRATULATING THE SPACE SHIP ONE TEAM FOR ACHIEVING A HISTORIC MILESTONE IN HUMAN SPACE FLIGHT

Mr. BINGAMAN (for himself, Mr. MCCAIN, Mr. HOLLINGS, and Mr. BROWNBACK) submitted the following resolution; which was considered and agreed to:

S. RES. 458

Whereas the Ansari X Prize was established with private capital to jumpstart the space tourism industry, inspire and educate students, focus public attention and investment capital on this new business frontier, and challenge explorers and rocket scientists around the world;

Whereas the $10,000,000 Ansari X Prize was modeled after the $25,000 Orteig Prize won by trans-Atlantic aviator Charles Lindbergh in 1927;

Whereas on October 4, 2004, SpaceShipOne, designed by Burt Rutan and flown first by Mike Melvill and later by Brian Binnie, won the Ansari X Prize by being the first privately funded space vehicle to depart from and safely return to Earth twice within 2 weeks;

Whereas SpaceShipOne broke the previous record for maximum altitude achieved by a plane, which was set by the X-15 in 1963;

Whereas the SpaceShipOne flights represent a historic accomplishment for humanity; and

Whereas future achievements in commercial space flight will be stimulated by an ongoing annual competition for an X Prize Cup, beginning in 2006 at White Sands Missile Range outside Las Cruces, New Mexico: Now, therefore be it

Resolved, That the Senate—

(1) congratulates the SpaceShipOne team led by Bert Rutan, and test pilots Mike Melvill and Brian Binnie, for their historic achievement in human space flight;

(2) recognizes the contributions of all members and supporters of the X Prize Foundation and the SpaceShipOne team, the efforts of which were instrumental in this accomplishment; and

(3) encourages the continuation of efforts towards practical commercial space flight through future X Prize Cup and other competitions.

SENATE RESOLUTION 459—DESIGNATING NOVEMBER 2004 AS ''AMERICAN MUSIC MONTH'' TO CELEBRATE AND HONOR MUSIC PERFORMANCE, EDUCATION, AND SCHOLARSHIP IN THE UNITED STATES

Mr. DURBIN (for himself and Mr. ALEXANDER) submitted the following resolution; which was considered and agreed to:

S. RES. 459

Whereas the music of the United States embodies the artistic reflection of the country's history and heritage and the promise of its ideals and values;

Whereas the music of the United States transcends culture, gender, race, class, and creed, and thrives freely as it is continually reinvented, rearranged, transformed, and infused by the personal experiences of men and women;

Whereas the music of the United States expresses the country's vital cultural and social identities and empowers the people of the United States to assert and preserve our pasts for a future, transforms the wondrous and harsh experiences of the people of the United States into potent messages that freely declare democratic choice and freedom of expression, inspires social justice, enlivens collective action, and reflects our Nation's dynamic social movements;

Whereas the National Federation of Music Clubs (NFMC) and its 17th president, Ada Holding Miller, building on their efforts to create American Music week in 1924 with the aid of Arthur Bodansky, conductor of the Metropolitan Opera, and Walter Damrosch, conductor of the New York Symphony Orchestra, established ''American Music Month'' and the ''Parade of American Music'' in February 1955 to recognize music and its importance to the social, cultural, historical, and educational development of the United States;

Whereas by action of the NFMC Board of Directors in 1998, the celebration of ''American Music Month'' was changed to the month of November in 1999 at the request of Sonneck Society for American Music;

Whereas the leading arts and education organizations of the United States, such as the Society for American Music, MENC: the National Association for Music Education, the College Music Society, the Music Library Association, the American Musicological Society, and Americans for the Arts, continue to strive to stimulate the appreciation, performance, creation, and study of music in the United States;

Whereas the month of November has witnessed the births of such artistic legends as Scott Joplin (1868), William Christopher ''W. C.'' Handy (1873), Aaron Copland (1900), Coleman Hawkins (1904), and Mary Travers (1937) of the folk song trio Peter, Paul and Mary; the premiers of the New York Symphony (1878), the Philadelphia Orchestra (1900), Jerome Kern's musical, Show Boat, in Washington, DC (1927), Frede Grofé's Grand Canyon Suite in Chicago (1931), and the first broadcast of the newly-organized National Broadcasting Company (1926);

Whereas November 2004 marks the sesquicentennial of John Philip Sousa's birth on November 6, 1854, and is an occasion to celebrate his monumental contributions to the musical heritage of the United States;

Whereas John Philip Sousa's music continues to embody the unflagging spirit of the United States and, as a product of a renaissance in the art and technology of the United States, affirmed the previous generation's contagious patriotism and profound love of country even as they witnessed the brutalities of a Nation at war; his music was a fanfare about and for all men and women of this United States and his rousing melodies celebrated the best and worst of the diverse cultures and emerging histories of the United States; even today, Sousa's music conveys our Nation's indomitable spirit to the world; and

Whereas John Philip Sousa, as Director of the United States Marine Band from 1880 to 1892, brought ''The President's Own'' to unprecedented levels of excellence and shaped the band into a world-famous musical organization, and through White House performances, public concerts, and national tours, the Band continues to maintain Sousa's standard of excellence for the performance of the music of the United States: Now, therefore, be it

Resolved, That the Senate—

(1) designates November 2004 as ''American Music Month'' to celebrate music performance, education, and scholarship in the United States;

(2) recognizes that the musical heritage of the United States should be honored, celebrated, and preserved for future generations as expressions of this country's democratic freedoms and indomitable spirit; and

(3) requests the President to issue a proclamation calling on the people of the United States to observe ''American Music Month'' with appropriate ceremonies and programs to honor the contributions of the music educators, performers, scholars, conductors, composers and arrangers, librarians, archivists, and curators of the United States for their tireless efforts to foster greater understanding and preservation of the diverse music and cultures of the United States through active performance, education, and cultural engagement.

SENATE RESOLUTION 460—HONORING THE YOUNG VICTIMS OF THE SIXTEENTH STREET BAPTIST CHURCH BOMBING, RECOGNIZING THE HISTORICAL SIGNIFICANCE OF THE TRAGIC EVENT, AND COMMENDING THE EFFORTS OF LAW ENFORCEMENT PERSONNEL TO BRING THE PERPETRATORS OF THIS CRIME TO JUSTICE ON THE OCCASION OF ITS 40TH ANNIVERSARY

Mr. SESSIONS (for himself and Mr. SHELBY) submitted the following resolution; which was considered and agreed to:

S. RES. 460

Whereas the Sixteenth Street Baptist Church of Birmingham, Alabama, was constructed in 1911 and served as a center for African-American life in the city and a rallying point for the civil rights movement during the 1960s;

Whereas on Sunday, September 15, 1963, segregationists protesting the mandatory integration of Birmingham's public schools firebombed the Sixteenth Street Baptist Church;

Whereas the blast killed Addie Mae Collins, age 14, Denise McNair, age 11, Carole Robertson, age 14, and Cynthia Wesley, age 14, all members of the Church, while they were preparing for Sunday service;

Whereas September 15, 1963, has been called the darkest day in the history of Birmingham and one of the darkest days of the entire civil rights movement;

Whereas this act of terrorism raised national and international awareness of the African-American civil rights struggle and galvanized those dedicated to the cause of civil rights;

Whereas Congress passed the Civil Rights Act of 1964 (Public Law 88-352, 78 Stat. 241) and the Voting Rights Act of 1965 (Public Law 89-110, 79 Stat. 437) in the wake of the bombing;

Whereas the 4 men suspected of the bombing, Bobby Frank Cherry, Herman Cash, Thomas Blanton, and Robert Chambliss, were not immediately prosecuted because authorities believed it impossible to obtain a conviction in the heated racial climate of the mid-1960s;

Whereas Alabama Attorney General Bill Baxley successfully prosecuted Robert Chambliss 13 years after the bombing;

Whereas after the indictment and conviction of Robert Chambliss, the bombing investigation was closed;

Whereas the bombing investigation was reopened in 1995 due to the efforts of Federal Bureau of Investigation Special Agent Rob Langford and local African-American leaders;

Whereas in 2001 and 2002, a joint Federal and State task force, under the supervision of United States Attorney Douglas Jones and Alabama Attorney General William Pryor,

successfully prosecuted Thomas Blanton and Bobby Frank Cherry with the assistance of State and local law enforcement personnel; and

Whereas the bombing, the prosecution of the offenders, and the cause of civil rights in general have become national and international concerns: Now, therefore, be it

Resolved, That the Senate, on the occasion of the 40th anniversary of the bombing of the Sixteenth Street Baptist Church of Birmingham, Alabama—

(1) honors the memory of Addie Mae Collins, Denise McNair, Carole Robertson, and Cynthia Wesley;

(2) recognizes the historical significance of the bombing and the enduring impact it has had on the cause of civil rights everywhere; and

(3) commends the efforts of the Alabama Attorney General's office for its successful prosecution of Robert Chambliss in 1977, the efforts of the joint Federal and State task force for the successful prosecution of Bobby Frank Cherry and Thomas Blanton in 2001 and 2002, and the efforts of all other law enforcement personnel who worked to bring the persons responsible for the bombing to justice.

SENATE RESOLUTION 461—DESIGNATING THE WEEK BEGINNING ON OCTOBER 17, 2004, AS ''NATIONAL CHARACTER COUNTS WEEK''

Mr. DOMENICI (for himself, Mr. DODD, Mr. COCHRAN, Mr. DORGAN, Mr. BUNNING, Mr. CONRAD, Mr. CAMPBELL, MR. ROCKEFELLER, Mr. WARNER, Mr. KERRY, Mr. FITZGERALD, Ms. LANDRIEU, Mr. HAGEL, Mr. KENNEDY, Mr. INHOFE, Mr. BIDEN, Mr. DEWINE, Mr. JOHNSON, Mr. LOTT, Mr. AKAKA, Mr. ALEXANDER, Mr. DURBIN, Mr. BROWNBACK, Mr. SESSIONS, Mr. LEVIN, Mrs. DOLE, Mr. SARBANES, Mr. TALENT, Ms. STABENOW, Ms. MURKOWSKI, Mr. BAYH, Mr. ALLEN, Mr. LIEBERMAN, and Mr. ENZI) submitted the following resolution; which was considered and agreed to:

S. RES. 461

Whereas the well-being of the Nation requires that the young people of the United States become an involved, caring citizenry with good character;

Whereas the character education of children has become more urgent as violence by and against youth increasingly threatens the physical and psychological well-being of the people of the United States;

Whereas more than ever, children need strong and constructive guidance from their families and their communities, including schools, youth organizations, religious institutions, and civic groups;

Whereas the character of a nation is only as strong as the character of its individual citizens;

Whereas the public good is advanced when young people are taught the importance of good character and the positive effects that good character can have in personal relationships, in school, and in the workplace;

Whereas scholars and educators agree that people do not automatically develop good character and that, therefore, conscientious efforts must be made by institutions and individuals that influence youth to help young people develop the essential traits and characteristics that comprise good character;

Whereas, although character development is, first and foremost, an obligation of families, the efforts of faith communities, schools, and youth, civic, and human service organizations also play an important role in fostering and promoting good character;

Whereas Congress encourages students, teachers, parents, youth, and community leaders to recognize the importance of character education in preparing young people to play a role in determining the future of the Nation;

Whereas effective character education is based on core ethical values which form the foundation of democratic society;

Whereas examples of character are trustworthiness, respect, responsibility, fairness, caring, citizenship, and honesty;

Whereas elements of character transcend cultural, religious, and socioeconomic differences;

Whereas the character and conduct of our youth reflect the character and conduct of society, and, therefore, every adult has the responsibility to teach and model ethical values and every social institution has the responsibility to promote the development of good character;

Whereas Congress encourages individuals and organizations, especially those who have an interest in the education and training of the young people of the United States, to adopt the elements of character as intrinsic to the well-being of individuals, communities, and society;

Whereas many schools in the United States recognize the need, and have taken steps, to integrate the values of their communities into their teaching activities; and

Whereas the establishment of National Character Counts Week, during which individuals, families, schools, youth organizations, religious institutions, civic groups, and other organizations would focus on character education, would be of great benefit to the Nation: Now, therefore, be it

Resolved, That the Senate—

(1) proclaims the week beginning October 17, 2004, as ''National Character Counts Week''; and

(2) requests that the President issue a proclamation calling upon the people of the United States and interested groups to—

(A) embrace the elements of character identified by local schools and communities, such as trustworthiness, respect, responsibility, fairness, caring, and citizenship; and

(B) observe the week with appropriate ceremonies, programs, and activities.

SENATE RESOLUTION 462—RECOGNIZING THE SIGNIFICANT ACHIEVEMENT OF THE PEOPLE AND GOVERNMENT OF AFGHANISTAN SINCE THE EMERGENCY LOYA JIRGA WAS HELD IN JUNE 2002 IN ESTABLISHING THE FOUNDATION AND MEANS TO HOLD PRESIDENTIAL ELECTIONS ON OCTOBER 9, 2004

Mr. HAGEL (for himself, Mr. LUGAR, Mr. BIDEN, Mr. LEAHY, Mr. MCCAIN, Mr. SUNUNU, and Mr. DODD) submitted the following resolution; which was considered and agreed to:

S. RES. 462

Whereas section 101(1) of the Afghanistan Freedom Support Act of 2002 (22 U.S.C. 7511(1)) declares that the ''United States and the international community should support efforts that advance the development of democratic civil authorities and institutions in Afghanistan and the establishment of a new broad-based, multi-ethnic, gender-sensitive, and fully representative government in Afghanistan'';

Whereas on January 4, 2004, the Constitutional Loya Jirga of Afghanistan adopted a constitution that promises free elections with full participation by women and establishes a legislative foundation for democracy in Afghanistan;

Whereas on June 15, 2004, President Bush stated that ''Afghanistan's journey to democracy and peace deserves the support and respect of every nation . . . . The world and the United States stand with [the people of Afghanistan] as partners in their quest for peace and prosperity and stability and democracy.'';

Whereas the independent Joint Electoral Management Body in Afghanistan and thousands of its staff throughout Afghanistan have worked to register voters and organize a fair and transparent election process despite violent and deadly attacks on them and on the purpose of their work;

Whereas more than 10,500,000 Afghans have been reported registered to vote, demonstrating great courage and a deep desire to have a voice in the future of Afghanistan, and more than 40 percent of those reported registered to vote are women;

Whereas the presidential election campaign in Afghanistan officially began on September 7, 2004 and 18 candidates, including one woman, are seeking the presidency;

Whereas on October 9, 2004, the people of Afghanistan will vote in the first direct presidential election, at the national level, in Afghanistan's history at 5,000 polling centers located throughout Afghanistan, as well as polling centers in Pakistan and Iran;

Whereas the United States, the European Union, the Organization for Security and Cooperation in Europe, and the Asian Network for Free Elections will send monitors and support teams to join the more than 4,000 domestic election observers in Afghanistan for the presidential election;

Whereas the United States and many international partners have provided technical assistance and financial support for elections in Afghanistan; and

Whereas the International Security Assistance Force (ISAF), led by the North Atlantic Treaty Organization (NATO), and coalition forces will join the Afghan National Army and police in Afghanistan to help provide security during the presidential election: Now, therefore, be it

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

(1) the United States applauds the steadfast commitment of the people of Afghanistan to achieve responsive and responsible government through democracy;

(2) the United States strongly supports self-government and the protection of human rights and freedom of conscience for all men and women in Afghanistan; and

(3) the United States remains committed to a long-term partnership with the people of Afghanistan and to a peaceful future for Afghanistan.

SENATE RESOLUTION 463—AUTHORIZING THE PRINTING OF A REVISED EDITION OF THE SENATE RULES AND MANUAL

Mr. LOTT submitted the following resolution; which was considered and agreed to:

S. RES. 463

SECTION 1. REVISED EDITION OF THE SENATE RULES AND MANUAL.

(a) REVISED EDITION.—The Committee on Rules and Administration of the Senate shall prepare a revised edition of the Senate Rules and Manual for the use of the 109th Congress.

(b) SENATE DOCUMENT.—The revised edition of the Senate Rules and Manual shall be printed as a Senate document.

(c) BINDING AND DISTRIBUTION.—In addition to the usual number of documents, 1,500 additional copies of the revised edition of the

Senate Rules and Manual shall be bound and distributed, of which—

(1) 500 paperbound copies shall be for the use of the Senate; and

(2) 1000 copies shall be delivered as may be directed by the Committee on Rules and Administration and bound as follows:

(A) 550 paperbound.

(B) 250 nontabbed black skiver.

(C) 200 tabbed black skiver.

AMENDMENTS SUBMITTED AND PROPOSED

SA 4050. Mr. FRIST (for Ms. COLLINS (for herself and Mr. FEINGOLD)) proposed an amendment to the concurrent resolution S. Con. Res. 8, expressing the sense of Congress that there should be established a National Visiting Nurse Association Week.''.

SA 4051. Mr. FRIST (for Ms. COLLINS (for herself and Mr. FEINGOLD)) submitted an amendment intended to be proposed by Mr. FRIST to the concurrent resolution S. Con. Res. 8, supra.

SA 4052. Mr. FRIST (for Ms. COLLINS (for herself and Mr. FEINGOLD)) proposed an amendment to the concurrent resolution S. Con. Res. 8, supra.

SA 4053. Mr. FRIST (for Mr. ALEXANDER (for himself, Mr. BINGAMAN, and Mr. DOMENICI)) proposed an amendment to the bill H.R. 4516, to require the Secretary of Energy to carry out a program of research and development to advance high-end computing.

SA 4054. Mr. FRIST (for Mr. ENSIGN (for himself and Mr . REID)) proposed an amendment to the bill H.R. 4593, to establish wilderness areas, promote conservation, improve public land, and provide for the high quality development in Lincoln County, Nevada, and for other purposes.

SA 4055. Mr. FRIST (for Mr. DOMENICI) proposed an amendment to the bill H.R. 1630, to revise the boundary of the Petrified Forest National Park in the State of Arizona, and for other purposes.

SA 4056. Mr. FRIST (for Mr. DOMENICI) proposed an amendment to the bill S. 1466, to facilitate the transfer of land in the State of Alaska, and for other purposes.

SA 4057. Mr. FRIST (for Mr. BINGAMAN) proposed an amendment to the bill S. 2656, to establish a National Commission on the Quincentennial of the discovery of Florida by Ponce de Leon.

TEXT OF AMENDMENTS

SA 4050. Mr. FRIST (for Ms. COLLINS (for herself and Mr. FEINGOLD)) proposed an amendment to the concurrent resolution S. Con. Res. 8, expressing the sense of Congress that there should be established a National Visiting Nurse Association Week; as follows:

Strike all after the resolving clause and insert the following:

That it is the sense of Congress that there should be established a National Visiting Nurse Association Week.

SA 4051. Mr. FRIST (for Ms. COLLINS (for herself and Mr. FEINGOLD)) submitted an amendment intended to be proposed by Mr. FRIST to the concurrent resolution S. Con. Res. 8, expressing the sense of Congress that there should be established a National Visiting Nurse Association Week; as follows:

Strike the preamble and insert the following:

Whereas visiting nurse associations (''VNAs'') are nonprofit home health agencies that, for more than 120 years, have been united in their mission to provide cost-effective and compassionate home and community-based health care to individuals, regardless of the individuals' condition or ability to pay for services;

Whereas there are approximately 500 visiting nurse associations, which employ more than 90,000 clinicians, provide health care to more than 4,000,000 people each year, and provide a critical safety net in communities by developing a network of community support services that enable individuals to live independently at home;

Whereas visiting nurse associations have historically served as primary public health care providers in their communities, and are today one of the largest providers of mass immunizations in the medicare program (delivering more than 2,500,000 influenza immunizations annually);

Whereas visiting nurse associations are often the home health providers of last resort, serving the most chronic of conditions (such as congestive heart failure, chronic obstructive pulmonary disease, AIDS, and quadriplegia) and individuals with the least ability to pay for services (more than 50 percent of all medicaid home health admissions are by visiting nurse associations);

Whereas any visiting nurse association budget surplus is reinvested in supporting the association's mission through services, including charity care, adult day care centers, wellness clinics, Meals-on-Wheels, and immunization programs;

Whereas visiting nurse associations and other nonprofit home health agencies care for the highest percentage of terminally ill and bedridden patients;

Whereas thousands of visiting nurse association volunteers across the Nation devote time serving as individual agency board members, raising funds, visiting patients in their homes, assisting in wellness clinics, and delivering meals to patients;

Whereas the establishment of a National Visiting Nurse Association Week would increase public awareness of the charity-based missions of visiting nurse associations and of their ability to meet the needs of chronically ill and disabled individuals who prefer to live at home rather than in a nursing home, and would spotlight preventive health clinics, adult day care programs, and other customized wellness programs that meet local community needs; and

Whereas the second week of May 2005 is an appropriate week to establish as National Visiting Nurse Association Week: Now, therefore, be it

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SA 4052. Mr. FRIST (for Ms. COLLINS (for herself and Mr. FEINGOLD)) proposed an amendment to the concurrent resolution S. Con. Res. 8, expressing the sense of Congress that there should be established a National Visiting Nurse Association Week''; as follows:

Amend the title so as to read: ''Expressing the sense of Congress that there should be established a National Visiting Nurse Association Week.''

SA 4053. Mr. FRIST (for Mr. ALEXANDER (for himself, Mr. BINGAMAN, and Mr. DOMENICI)) proposed an amendment to the bill H.R. 4516, to require the Secretary of Energy to carry out a program of research and development to advance high-end computing; as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Department of Energy High-End Computing Revitalization Act of 2004''.

SEC. 2. DEFINITIONS.

In this Act:

(1) CENTER.—The term ''Center'' means a High-End Software Development Center established under section 3(d).

(2) HIGH-END COMPUTING SYSTEM.—The term ''high-end computing system'' means a computing system with performance that substantially exceeds that of systems that are commonly available for advanced scientific and engineering applications.

(3) LEADERSHIP SYSTEM.—The term ''Leadership System'' means a high-end computing system that is among the most advanced in the world in terms of performance in solving scientific and engineering problems.

(4) INSTITUTION OF HIGHER EDUCATION.—The term ''institution of higher education'' has the meaning given the term in section 101(a) of the Higher Education Act of 1965 (20 U.S.C. 1001(a)).

(5) SECRETARY.—The term ''Secretary'' means the Secretary of Energy, acting through the Director of the Office of Science of the Department of Energy.

SEC. 3. DEPARTMENT OF ENERGY HIGH-END COMPUTING RESEARCH AND DEVELOPMENT PROGRAM.

(a) IN GENERAL.—The Secretary shall—

(1) carry out a program of research and development (including development of software and hardware) to advance high-end computing systems; and

(2) develop and deploy high-end computing systems for advanced scientific and engineering applications.

(b) PROGRAM.—The program shall—

(1) support both individual investigators and multidisciplinary teams of investigators;

(2) conduct research in multiple architectures, which may include vector, reconfigurable logic, streaming, processor-in-memory, and multithreading architectures;

(3) conduct research on software for high-end computing systems, including research on algorithms, programming environments, tools, languages, and operating systems for high-end computing systems, in collaboration with architecture development efforts;

(4) provide for sustained access by the research community in the United States to high-end computing systems and to Leadership Systems, including provision of technical support for users of such systems;

(5) support technology transfer to the private sector and others in accordance with applicable law; and

(6) ensure that the high-end computing activities of the Department of Energy are coordinated with relevant activities in industry and with other Federal agencies, including the National Science Foundation, the Defense Advanced Research Projects Agency, the National Nuclear Security Administration, the National Security Agency, the National Institutes of Health, the National Aeronautics and Space Administration, the National Oceanic and Atmospheric Administration, the National Institutes of Standards and Technology, and the Environmental Protection Agency.

(c) LEADERSHIP SYSTEMS FACILITIES.—

(1) IN GENERAL.—As part of the program carried out under this Act, the Secretary shall establish and operate 1 or more Leadership Systems facilities to—

(A) conduct advanced scientific and engineering research and development using Leadership Systems; and

(B) develop potential advancements in high-end computing system hardware and software.

(2) ADMINISTRATION.—In carrying out this subsection, the Secretary shall provide to Leadership Systems, on a competitive, merit-reviewed basis, access to researchers in United States industry, institutions of higher education, national laboratories, and other Federal agencies.

(d) HIGH-END SOFTWARE DEVELOPMENT CENTER.—

(1) IN GENERAL.—As part of the program carried out under this Act, the Secretary shall establish at least 1 High-End Software Development Center.

(2) DUTIES.—A Center shall concentrate efforts to develop, test, maintain, and support optimal algorithms, programming environments, tools, languages, and operating systems for high-end computing systems.

(3) PROPOSALS.—In soliciting proposals for the Center, the Secretary shall encourage staffing arrangements that include both permanent staff and a rotating staff of researchers from other institutions and industry to assist in coordination of research efforts and promote technology transfer to the private sector.

(4) USE OF EXPERTISE.—The Secretary shall use the expertise of a Center to assess research and development in high-end computing system architecture.

(5) SELECTION.—The selection of a Center shall be determined by a competitive proposal process administered by the Secretary.

SEC. 4. AUTHORIZATION OF APPROPRIATIONS.

In addition to amounts otherwise made available for high-end computing, there are authorized to be appropriated to the Secretary to carry out this Act—

(1) $50,000,000 for fiscal year 2005;

(2) $55,000,000 for fiscal year 2006; and

(3) $60,000,000 for fiscal year 2007.

SEC. 5. ASTRONOMY AND ASTROPHYSICS ADVISORY COMMITTEE.

(a) AMENDMENTS.—Section 23 of the National Science Foundation Authorization Act of 2002 (42 U.S.C. 1862n–9) is amended—

(1) in subsection (a) and paragraphs (1) and (2) of subsection (b), by striking ''and the National Aeronautics and Space Administration'' and inserting '', the National Aeronautics and Space Administration, and the Department of Energy'';

(2) in subsection (b)(3), by striking ''Administration, and'' and inserting ''Administration, the Secretary of Energy, '';

(3) in subsection (c)—

(A) in paragraphs (1) and (2), by striking ''5'' and inserting ''4'';

(B) in paragraph (2), by striking ''and'' at the end;

(C) by redesignating paragraph (3) as paragraph (4), and in that paragraph by striking ''3'' and inserting ''2''; and

(D) by inserting after paragraph (2) the following:

''(3) 3 members selected by the Secretary of Energy;'' and

(4) in subsection (f), by striking ''the advisory bodies of other Federal agencies, such as the Department of Energy, which may engage in related research activities'' and inserting ''other Federal advisory committees that advise Federal agencies that engage in related research activities''.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) take effect on March 15, 2005.

SEC. 6. REMOVAL OF SUNSET PROVISION FROM SAVINGS IN CONSTRUCTION ACT OF 1996.

Section 14 of the Metric Conversion Act of 1975 (15 U.S.C. 205*l*) is amended by striking subsection (e).

SA 4054. Mr. FRIST (for Mr. ENSIGN (for himself and Mr. REID)) proposed an amendment to the bill H.R. 4593, to establish wilderness areas, promote conservation, improve public land, and provide for the high quality development in Lincoln County, Nevada, and for other purposes; as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as are necessary to carry out this Act.

SEC. 2. SHORT TITLE.

This Act may be cited as the ''Lincoln County Conservation, Recreation, and Development Act of 2004''.

TITLE I—LAND DISPOSAL

SEC. 101. DEFINITIONS.

In this title:

(1) COUNTY.—The term ''County'' means Lincoln County, Nevada.

(2) MAP.—The term ''map'' means the map entitled ''Lincoln County Conservation, Recreation, and Development Act Map'' and dated October 1, 2004.

(3) SECRETARY.—The term ''Secretary'' means the Secretary of the Interior.

(4) SPECIAL ACCOUNT.—The term ''special account'' means the special account established under section 103(b)(3).

SEC. 102. CONVEYANCE OF LINCOLN COUNTY LAND.

(a) IN GENERAL.—Notwithstanding sections 202 and 203 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1711, 1712), the Secretary, in cooperation with the County, in accordance with that Act, this title, and other applicable law and subject to valid existing rights, shall conduct sales of—

(1) the land described in subsection (b)(1) to qualified bidders not later than 75 days after the date of the enactment of this Act; and

(2) the land described in subsection (b)(2) to qualified bidders as such land becomes available for disposal.

(b) DESCRIPTION OF LAND.—The land referred to in subsection (a) consists of—

(1) the land identified on the map as Tract A and Tract B totaling approximately 13,328 acres; and

(2) not more than 90,000 acres of Bureau of Land Management managed public land in Lincoln County that is not segregated or withdrawn on the date of enactment of this Act or thereafter, and that is identified for disposal by the BLM either through—

(A) the Ely Resource Management Plan (intended to be finalized in 2005); or

(B) a subsequent amendment to that land use plan undertaken with full public involvement.

(c) AVAILABILITY.—Each map and legal description shall be on file and available for public inspection in (as appropriate)—

(1) the Office of the Director of the Bureau of Land Management;

(2) the Office of the Nevada State Director of the Bureau of Land Management;

(3) the Ely Field Office of the Bureau of Land Management; and

(4) the Caliente Field Station of the Bureau of Land Management.

(d) JOINT SELECTION REQUIRED.—The Secretary and the County shall jointly select which parcels of land described in subsection (b)(2) to offer for sale under subsection (a).

(e) COMPLIANCE WITH LOCAL PLANNING AND ZONING LAWS.—Before a sale of land under subsection (a), the County shall submit to the Secretary a certification that qualified bidders have agreed to comply with—

(1) County and city zoning ordinances; and

(2) any master plan for the area approved by the County.

(f) METHOD OF SALE; CONSIDERATION.—The sale of land under subsection (a) shall be—

(1) consistent with section 203(d) and 203(f) of the Federal Land Management Policy Act of 1976 (43 U.S.C. 1713(d) and (f));

(2) through a competitive bidding process unless otherwise determined by the Secretary; and

(3) for not less than fair market value.

(g) WITHDRAWAL.—

(1) IN GENERAL.—Subject to valid existing rights and except as provided in paragraph (2), the land described in subsection (b) is withdrawn from—

(A) all forms of entry and appropriation under the public land laws, including the mining laws;

(B) location, entry, and patent under the mining laws; and

(C) operation of the mineral leasing and geothermal leasing laws.

(2) EXCEPTION.—Paragraph (1)(A) shall not apply to a competitive sale or an election by the County to obtain the land described in subsection (b) for public purposes under the Act of June 14, 1926 (43 U.S.C. 869 et seq; commonly known as the ''Recreation and Public Purposes Act'').

(h) DEADLINE FOR SALE.—

(1) IN GENERAL.—Except as provided in paragraph (2), the Secretary shall—

(A) notwithstanding the Lincoln County Land Act of 2000 (114 Stat. 1046), not later than 75 days after the date of the enactment of this Act, offer by sale the land described in subsection (b)(1) if there is a qualified bidder for such land; and

(B) offer for sale annually lands identified for sale in subsection (b)(2) until such lands are disposed of or unless the county requests a postponement under paragraph (2).

(2) POSTPONEMENT; EXCLUSION FROM SALE.—

(A) REQUEST BY COUNTY FOR POSTPONEMENT OR EXCLUSION.—At the request of the County, the Secretary shall postpone or exclude from the sale all or a portion of the land described in subsection (b)(2).

(B) INDEFINITE POSTPONEMENT.—Unless specifically requested by the County, a postponement under subparagraph (A) shall not be indefinite.

SEC. 103. DISPOSITION OF PROCEEDS.

(a) INITIAL LAND SALE.—Section 5 of the Lincoln County Land Act of 2000 (114 Stat. 1047) shall apply to the disposition of the gross proceeds from the sale of land described in section 102(b)(1).

(b) DISPOSITION OF PROCEEDS.—Proceeds from sales of lands described in section 102(b)(2) shall be disbursed as follows—

(1) 5 percent shall be paid directly to the state for use in the general education program of the State;

(2) 10 percent shall be paid to the County for use for fire protection, law enforcement, public safety, housing, social services, and transportation; and

(3) the remainder shall be deposited in a special account in the Treasury of the United States and shall be available without further appropriation to the Secretary until expended for—

(A) the reimbursement of costs incurred by the Nevada State office and the Ely Field Office of the Bureau of Land Management for preparing for the sale of land described in section 102(b) including surveys appraisals, compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321) and compliance with the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1711, 1712);

(B) the inventory, evaluation, protection, and management of unique archaeological resources (as defined in section 3 of the Archaeological Resources Protection Act of 19792 (16 U.S.C. 470bb)) of the County;

(C) the development and implementation of a multispecies habitat conservation plan for the County;

(D) processing of public land use authorizations and rights-of-way relating to the development of land conveyed under section 102(a) of this Act;

(E) processing the Silver State OHV trail and implementing the management plan required by section 151(c)(2) of this Act; and

(F) processing wilderness designation, including but not limited to, the costs of appropriate fencing, signage, public education, and enforcement for the wilderness areas designated.

(c) INVESTMENT OF SPECIAL ACCOUNT.—Any amounts deposited in the special account shall earn interest in an amount determined by the Secretary of the Treasury on the basis of the current average market yield on outstanding marketable obligations of the United States of comparable maturities, and may be expended according to the provisions of this section.

TITLE II—WILDERNESS AREAS

SEC. 111. FINDINGS.

Congress finds that—

(1) public land in the County contains unique and spectacular natural resources, including—

(A) priceless habitat for numerous species of plants and wildlife; and

(B) thousands of acres of land that remain in a natural state; and

(2) continued preservation of those areas would benefit the County and all of the United States by—

(A) ensuring the conservation of ecologically diverse habitat;

(B) protecting prehistoric cultural resources;

(C) conserving primitive recreational resources; and

(D) protecting air and water quality.

SEC. 112. DEFINITIONS.

In this title:

(1) COUNTY.—The term ''County'' means Lincoln County, Nevada.

(2) SECRETARY.—The term ''Secretary'' means the Secretary of the Interior.

(3) STATE.—The term ''State'' means the State of Nevada.

SEC. 113. ADDITIONS TO NATIONAL WILDERNESS PRESERVATION SYSTEM.

(a) ADDITIONS.—The following land in the State is designated as wilderness and as components of the National Wilderness Preservation System:

(1) MORMON MOUNTAINS WILDERNESS.—Certain Federal land managed by the Bureau of Land Management, comprising approximately 157,938 acres, as generally depicted on the map entitled ''Southern Lincoln County Wilderness Map'', dated October 1, 2004, which shall be known as the ''Mormon Mountains Wilderness''.

(2) MEADOW VALLEY RANGE WILDERNESS.—Certain Federal land managed by the Bureau of Land Management, comprising approximately 123,488 acres, as generally depicted on the map entitled ''Southern Lincoln County Wilderness Map'', dated October 1, 2004, which shall be known as the ''Meadow Valley Range Wilderness''.

(3) DELAMAR MOUNTAINS WILDERNESS.—Certain Federal land managed by the Bureau of Land Management, comprising approximately 111,328 acres, as generally depicted on the map entitled ''Southern Lincoln County Wilderness Map'', dated October 1, 2004, which shall be known as the ''Delamar Mountains Wilderness''.

(4) CLOVER MOUNTAINS WILDERNESS.—Certain Federal land managed by the Bureau of Land Management, comprising approximately 85,748 acres, as generally depicted on the map entitled ''Southern Lincoln County Wilderness Map'', dated October 1, 2004, which shall be known as the ''Clover Mountains Wilderness''.

(5) SOUTH PAHROC RANGE WILDERNESS.—Certain Federal land managed by the Bureau of Land Management, comprising approximately 25,800 acres, as generally depicted on the map entitled ''Western Lincoln County Wilderness Map'', dated October 1, 2004, which shall be known as the ''South Pahroc Range Wilderness''.

(6) WORTHINGTON MOUNTAINS WILDERNESS.—Certain Federal land managed by the Bureau of Land Management, comprising approximately 30,664 acres, as generally depicted on the map entitled ''Western Lincoln County Wilderness Map'', dated October 1, 2004, which shall be known as the ''Worthington Mountains Wilderness''.

(7) WEEPAH SPRING WILDERNESS.—Certain Federal land managed by the Bureau of Land Management, comprising approximately 51,480 acres, as generally depicted on the map entitled ''Western Lincoln County Wilderness Map'', dated October 1, 2004, which shall be known as the ''Weepah Spring Wilderness''.

(8) PARSNIP PEAK WILDERNESS.—Certain Federal land managed by the Bureau of Land Management, comprising approximately 43,693 acres, as generally depicted on the map entitled ''Northern Lincoln County Wilderness Map'', dated October 1, 2004, which shall be known as the ''Parsnip Peak Wilderness''.

(9) WHITE ROCK RANGE WILDERNESS.—Certain Federal land managed by the Bureau of Land Management, comprising approximately 24,413 acres, as generally depicted on the map entitled ''Northern Lincoln County Wilderness Map'', dated October 1, 2004, which shall be known as the ''White Rock Range Wilderness''.

(10) FORTIFICATION RANGE WILDERNESS.—Certain Federal land managed by the Bureau of Land Management, comprising approximately 30,656 acres, as generally depicted on the map entitled ''Northern Lincoln County Wilderness Map'', dated October 1, 2004, which shall be known as the ''Fortification Range Wilderness''.

(11) FAR SOUTH EGANS WILDERNESS.—Certain Federal land managed by the Bureau of Land Management, comprising approximately 36,384 acres, as generally depicted on the map entitled ''Northern Lincoln County Wilderness Map'', dated October 1, 2004, which shall be known as the ''Far South Egans Wilderness''.

(12) TUNNEL SPRING WILDERNESS.—Certain Federal land managed by the Bureau of Land Management, comprising approximately 5,371 acres, as generally depicted on the map entitled ''Southern Lincoln County Wilderness Map'', dated October 1, 2004, which shall be known as the ''Tunnel Spring Wilderness''.

(13) BIG ROCKS WILDERNESS.—Certain Federal land managed by the Bureau of Land Management, comprising approximately 12,997 acres, as generally depicted on the map entitled ''Western Lincoln County Wilderness Map'', dated October 1, 2004, which shall be known as the ''Big Rocks Wilderness''.

(14) MT. IRISH WILDERNESS.—Certain Federal land managed by the Bureau of Land Management, comprising approximately 28,334 acres, as generally depicted on the map entitled ''Western Lincoln County Wilderness Map'', dated October 1, 2004, which shall be known as the ''Mt. Irish Wilderness''.

(b) BOUNDARY.—The boundary of any portion of a wilderness area designated by subsection (a) that is bordered by a road shall be at least 100 feet from the edge of the road to allow public access.

(c) MAP AND LEGAL DESCRIPTION.—

(1) IN GENERAL.—As soon as practicable after the date of enactment of this Act, the Secretary shall file a map and legal description of each wilderness area designated by subsection (a) with the Committee on Resources of the House of Representatives and the Committee on Energy and Natural Resources of the Senate.

(2) EFFECT.—Each map and legal description shall have the same force and effect as if included in this section, except that the Secretary may correct clerical and typographical errors in the map or legal description.

(3) AVAILABILITY.—Each map and legal description shall be on file and available for public inspection in (as appropriate)—

(A) the Office of the Director of the Bureau of Land Management;

(B) the Office of the Nevada State Director of the Bureau of Land Management;

(C) the Ely Field Office of the Bureau of Land Management; and

(D) the Caliente Field Station of the Bureau of Land Management.

(d) WITHDRAWAL.—Subject to valid existing rights, the wilderness areas designated by subsection (a) are withdrawn from—

(1) all forms of entry, appropriation, and disposal under the public land laws;

(2) location, entry, and patent under the mining laws; and

(3) operation of the mineral leasing and geothermal leasing laws.

SEC. 114. ADMINISTRATION.

(a) MANAGEMENT.—Subject to valid existing rights, each area designated as wilderness by this title shall be administered by the Secretary in accordance with the Wilderness Act (16 U.S.C. 1131 et seq.), except that—

(1) any reference in that Act to the effective date shall be considered to be a reference to the date of the enactment of this Act; and

(2) any reference in that Act to the Secretary of Agriculture shall be considered to be a reference to the Secretary of the Interior.

(b) LIVESTOCK.—Within the wilderness areas designated under this title that are administered by the Bureau of Land Management, the grazing of livestock in areas in which grazing is established as of the date of enactment of this Act shall be allowed to continue, subject to such reasonable regulations, policies, and practices that the Secretary considers necessary, consistent with section 4(d)(4) of the Wilderness Act (16 U.S.C. 1133(d)(4)), including the guidelines set forth in Appendix A of House Report 101–405.

(c) INCORPORATION OF ACQUIRED LAND AND INTERESTS.—Any land or interest in land within the boundaries of an area designated as wilderness by this title that is acquired by the United States after the date of the enactment of this Act shall be added to and administered as part of the wilderness area within which the acquired land or interest is located.

(d) WATER RIGHTS.—

(1) FINDINGS.—Congress finds that—

(A) the land designated as Wilderness by this title is within the Northern Mojave and Great Basin Deserts, is arid in nature, and includes ephemeral streams;

(B) the hydrology of the land designated as wilderness by this title is predominantly characterized by complex flow patterns and alluvial fans with impermanent channels;

(C) the subsurface hydrogeology of the region is characterized by ground water subject to local and regional flow gradients and unconfined and artesian conditions;

(D) the land designated as wilderness by this title is generally not suitable for use or development of new water resource facilities; and

(E) because of the unique nature and hydrology of the desert land designated as wilderness by this title, it is possible to provide for proper management and protection of the

wilderness and other values of lands in ways different from those used in other legislation.

(2) STATUTORY CONSTRUCTION.—Nothing in this title—

(A) shall constitute or be construed to constitute either an express or implied reservation by the United States of any water or water rights with respect to the land designated as wilderness by this title;

(B) shall affect any water rights in the State existing on the date of the enactment of this Act, including any water rights held by the United States;

(C) shall be construed as establishing a precedent with regard to any future wilderness designations;

(D) shall affect the interpretation of, or any designation made pursuant to, any other Act; or

(E) shall be construed as limiting, altering, modifying, or amending any of the interstate compacts or equitable apportionment decrees that apportion water among and between the State and other States.

(3) NEVADA WATER LAW.—The Secretary shall follow the procedural and substantive requirements of the law of the State in order to obtain and hold any water rights not in existence on the date of enactment of this Act with respect to the wilderness areas designated by this title.

(4) NEW PROJECTS.—

(A) WATER RESOURCE FACILITY.—As used in this paragraph, the term ''water resource facility''—

(i) means irrigation and pumping facilities, reservoirs, water conservation works, aqueducts, canals, ditches, pipelines, wells, hydropower projects, and transmission and other ancillary facilities, and other water diversion, storage, and carriage structures; and

(ii) does not include wildlife guzzlers.

(B) RESTRICTION ON NEW WATER RESOURCE FACILITIES.—Except as otherwise provided in this Act, on and after the date of the enactment of this Act, neither the President nor any other officer, employee, or agent of the United States shall fund, assist, authorize, or issue a license or permit for the development of any new water resource facility within the wilderness areas designated by this Act.

SEC. 115. ADJACENT MANAGEMENT.

(a) IN GENERAL.—Congress does not intend for the designation of wilderness in the State pursuant to this title to lead to the creation of protective perimeters or buffer zones around any such wilderness area.

(b) NONWILDERNESS ACTIVITIES.—The fact that nonwilderness activities or uses can be seen or heard from areas within a wilderness designated under this title shall not preclude the conduct of those activities or uses outside the boundary of the wilderness area.

SEC. 116. MILITARY OVERFLIGHTS.

Nothing in this title restricts or precludes—

(1) low-level overflights of military aircraft over the areas designated as wilderness by this title, including military overflights that can be seen or heard within the wilderness areas;

(2) flight testing and evaluation; or

(3) the designation or creation of new units of special use airspace, or the establishment of military flight training routes, over the wilderness areas.

SEC. 117. NATIVE AMERICAN CULTURAL AND RELIGIOUS USES.

Nothing in this title shall be construed to diminish the rights of any Indian tribe. Nothing in this title shall be construed to diminish tribal rights regarding access to Federal land for tribal activities, including spiritual, cultural, and traditional food-gathering activities.

SEC. 118. RELEASE OF WILDERNESS STUDY AREAS.

(a) FINDING.—Congress finds that, for the purposes of section 603 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1782), the public land in the County administered by the Bureau of Land Management in the following areas has been adequately studied for wilderness designation:

(1) The Table Mountain Wilderness Study Area.

(2) Evergreen A, B, and C Wilderness Study Areas.

(3) Any portion of the wilderness study areas—

(A) not designated as wilderness by section 114(a); and

(B) depicted as released on—

(i) the map entitled ''Northern Lincoln County Wilderness Map'' and dated October 1, 2004;

(ii) the map entitled ''Southern Lincoln County Wilderness Map'' and dated October 1, 2004; or

(iii) the map entitled ''Western Lincoln County Wilderness Map'' and dated October 1, 2004.

(b) RELEASE.—Any public land described in subsection (a) that is not designated as wilderness by this title—

(1) is no longer subject to section 603(c) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1782(c));

(2) shall be managed in accordance with—

(A) land management plans adopted under section 202 of that Act (43 U.S.C. 1712); and

(B) existing cooperative conservation agreements; and

(3) shall be subject to the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.).

SEC. 119. WILDLIFE MANAGEMENT.

(a) IN GENERAL.—In accordance with section 4(d)(7) of the Wilderness Act (16 U.S.C. 1133(d)(7)), nothing in this title affects or diminishes the jurisdiction of the State with respect to fish and wildlife management, including the regulation of hunting, fishing, and trapping, in the wilderness areas designated by this title.

(b) MANAGEMENT ACTIVITIES.—In furtherance of the purposes and principles of the Wilderness Act, management activities to maintain or restore fish and wildlife populations and the habitats to support such populations may be carried out within wilderness areas designated by this title where consistent with relevant wilderness management plans, in accordance with appropriate policies such as those set forth in Appendix B of House Report 101–405, including the occasional and temporary use of motorized vehicles, if such use, as determined by the Secretary, would promote healthy, viable, and more naturally distributed wildlife populations that would enhance wilderness values and accomplish those purposes with the minimum impact necessary to reasonably accomplish the task.

(c) EXISTING ACTIVITIES.—Consistent with section 4(d)(1) of the Wilderness Act (16 U.S.C. 1133(d)) and in accordance with appropriate policies such as those set forth in Appendix B of House Report 101–405, the State may continue to use aircraft, including helicopters, to survey, capture, transplant, monitor, and provide water for wildlife populations, including bighorn sheep, and feral stock, horses, and burros.

(d) WILDLIFE WATER DEVELOPMENT PROJECTS.—Subject to subsection (f), the Secretary shall authorize structures and facilities, including existing structures and facilities, for wildlife water development projects, including guzzlers, in the wilderness areas designated by this Act if—

(1) the structures and facilities will, as determined by the Secretary, enhance wilderness values by promoting healthy, viable, and more naturally distributed wildlife populations; and

(2) the visual impacts of the structures and facilities on the wilderness areas can reasonably be minimized.

(e) HUNTING, FISHING, AND TRAPPING.—In consultation with the appropriate State agency (except in emergencies), the Secretary may designate by regulation areas in which, and establish periods during which, for reasons of public safety, administration, or compliance with applicable laws, no hunting, fishing, or trapping will be permitted in the wilderness areas designated by this Act.

(f) COOPERATIVE AGREEMENT.—The terms and conditions under which the State, including a designee of the State, may conduct wildlife management activities in the wilderness areas designated by this title are specified in the cooperative agreement between the Secretary and the State, entitled ''Memorandum of Understanding between the Bureau of Land Management and the Nevada Department of Wildlife Supplement No. 9,'' and signed November and December 2003, including any amendments to that document agreed upon by the Secretary and the State and subject to all applicable laws and regulations. Any references to Clark County in that document shall also be deemed to be referred to and shall apply to Lincoln County, Nevada.

SEC. 120. WILDFIRE MANAGEMENT.

Consistent with section 4 of the Wilderness Act (16 U.S.C. 1133), nothing in this title precludes a Federal, State, or local agency from conducting wildfire management operations (including operations using aircraft or mechanized equipment) to manage wildfires in the wilderness areas designated by this title.

SEC. 121. CLIMATOLOGICAL DATA COLLECTION.

Subject to such terms and conditions as the Secretary may prescribe, nothing in this title precludes the installation and maintenance of hydrologic, meteorologic, or climatological collection devices in the wilderness areas designated by this title if the facilities and access to the facilities are essential to flood warning, flood control, and water reservoir operation activities.

TITLE III—UTILITY CORRIDORS

SEC. 131. UTILITY CORRIDOR AND RIGHTS-OF-WAY.

(a) UTILITY CORRIDOR.—

(1) IN GENERAL.—Consistent with title II and notwithstanding sections 202 and 503 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1711, 1763), the Secretary of the Interior (referred to in this section as the ''Secretary'') shall establish on public land a 2,640-foot wide corridor for utilities in Lincoln County and Clark County, Nevada, as generally depicted on the map entitled ''Lincoln County Conservation, Recreation, and Development Act'', and dated October 1, 2004.

(2) AVAILABILITY.—Each map and legal description shall be on file and available for public inspection in (as appropriate)—

(A) the Office of the Director of the Bureau of Land Management;

(B) the Office of the Nevada State Director of the Bureau of Land Management;

(C) the Ely Field Office of the Bureau of Land Management; and

(D) the Caliente Field Station of the Bureau of Land Management.

(b) RIGHTS-OF-WAY.—

(1) IN GENERAL.—Notwithstanding sections 202 and 503 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1711, 1763), and subject to valid and existing rights, the Secretary shall grant to the Southern Nevada Water Authority and the Lincoln County Water District nonexclusive rights-of-way to Federal land in Lincoln County and Clark

County, Nevada, for any roads, wells, well fields, pipes, pipelines, pump stations, storage facilities, or other facilities and systems that are necessary for the construction and operation of a water conveyance system, as depicted on the map.

(2) APPLICABLE LAW.—A right-of-way granted under paragraph (1) shall be granted in perpetuity and shall not require the payment of rental.

(3) COMPLIANCE WITH NEPA.—Before granting a right-of-way under paragraph (1), the Secretary shall comply with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), including the identification and consideration of potential impacts to fish and wildlife resources and habitat.

(c) WITHDRAWAL.—Subject to valid existing rights, the utility corridors designated by subsection (a) are withdrawn from—

(1) all forms of entry, appropriation, and disposal under the public land laws;

(2) location, entry, and patent under the mining laws; and

(3) operation of the mineral leasing and geothermal leasing laws.

(d) STATE WATER LAW.—Nothing in this title shall—

(1) prejudice the decisions or abrogate the jurisdiction of the Nevada or Utah State Engineers with respect to the appropriation, permitting, certification, or adjudication of water rights;

(2) preempt Nevada or Utah State water law; or

(3) limit or supersede existing water rights or interest in water rights under Nevada or Utah State law.

(e) WATER RESOURCES STUDY.—

(1) IN GENERAL.—The Secretary, acting through the United States Geological Survey, the Desert Research Institute, and a designee from the State of Utah shall conduct a study to investigate ground water quantity, quality, and flow characteristics in the deep carbonate and alluvial aquifers of White Pine County, Nevada, and any groundwater basins that are located in White Pine County, Nevada, or Lincoln County, Nevada, and adjacent areas in Utah. The study shall—

(A) focus on a review of existing data and may include new data;

(B) determine the approximate volume of water stored in aquifers in those areas;

(C) determine the discharge and recharge characteristics of each aquifer system;

(D) determine the hydrogeologic and other controls that govern the discharge and recharge of each aquifer system; and

(E) develop maps at a consistent scale depicting aquifer systems and the recharge and discharge areas of such systems.

(2) TIMING; AVAILABILITY.—The Secretary shall complete a draft of the water resources report required under paragraph (1) not later than 30 months after the date of the enactment of this Act. The Secretary shall then make the draft report available for public comment for a period of not less than 60 days. The final report shall be submitted to the Committee on Resources in the House of Representatives and the Committee on Energy and Natural Resources in the Senate and made available to the public not later than 36 months after the date of the enactment of this Act.

(3) AGREEMENT.—Prior to any transbasin diversion from ground-water basins located within both the State of Nevada and the State of Utah, the State of Nevada and the State of Utah shall reach an agreement regarding the division of water resources of those interstate ground-water flow system(s) from which water will be diverted and used by the project. The agreement shall allow for the maximum sustainable beneficial use of the water resources and protect existing water rights.

(4) FUNDING.—Section 4(e)(3)(A) of the Southern Nevada Public Land Management Act of 1998 (112 Stat. 2346; 116 Stat. 2007; 117 Stat. 1317) is amended—

(A) in clauses (ii), (iv), and (v), by striking ''County'' each place it appears and inserting ''and Lincoln Counties'';

(B) in clause (vi), by striking ''and'' at the end;

(C) by redesignating clause (vii) as clause (viii); and

(D) by inserting after clause (vi) the following:

''(vii) for development of a water study for Lincoln and White Pine Counties, Nevada, in an amount not to exceed $6,000,000; and''.

SEC. 132. RELOCATION OF RIGHT-OF-WAY AND UTILITY CORRIDORS LOCATED IN CLARK AND LINCOLN COUNTIES IN THE STATE OF NEVADA.

(a) DEFINITIONS.—In this section:

(1) AGREEMENT.—The term ''Agreement'' means the land exchange agreement between Aerojet-General Corporation and the United States, dated July 14, 1988.

(2) CORRIDOR.—The term ''corridor'' means—

(A) the right-of-way corridor that is—

(i) identified in section 5(b)(1) of the Nevada-Florida Land Exchange Authorization Act of 1988 (102 Stat. 55); and

(ii) described in section 14(a) of the Agreement;

(B) such portion of the utility corridor identified in the 1988 Las Vegas Resource Management Plan located south of the boundary of the corridor described in subparagraph (A) as is necessary to relocate the right-of-way corridor to the area described in subsection (c)(2); and

(C) such portion of the utility corridor identified in the 2000 Caliente Management Framework Plan Amendment located north of the boundary of the corridor described in subparagraph (A) as is necessary to relocate the right-of-way corridor to the area described in subsection (c)(2).

(3) SECRETARY.—The term ''Secretary'' means the Secretary of the Interior.

(b) RELINQUISHMENT AND FAIR MARKET VALUE.—

(1) IN GENERAL.—The Secretary shall, in accordance with this section, relinquish all right, title, and interest of the United States in and to the corridor on receipt of a payment in an amount equal to the fair market value of the corridor (plus any costs relating to the right-of-way relocation described in this title).

(2) FAIR MARKET VALUE.—

(A) The fair market value of the corridor shall be equal to the amount by which the value of the discount described in the 1988 appraisal of the corridor that was applied to the land underlying the corridor has increased, as determined by the Secretary using the multiplier determined under subparagraph (B).

(B) Not later than 60 days after the date of the enactment of this Act, the Appraisal Services Directorate of the Department of the Interior shall determine an appropriate multiplier to reflect the change in the value of the land underlying the corridor between—

(i) the date of which the corridor was transferred in accordance with the Agreement; and

(ii) the date of enactment of this Act.

(3) PROCEEDS.—Proceeds under this subsection shall be deposited in the account established under section 103(b)(3)

(c) RELOCATION.—

(1) IN GENERAL.—The Secretary shall relocate to the area described in paragraph (2), the portion of IDI–26446 and UTU–73363 identified as NVN–49781 that is located in the corridor relinquished under subsection (b)(1).

(2) DESCRIPTION OF AREA.—The area referred to in paragraph (1) is the area located on public land west of United States Route 93.

(3) REQUIREMENTS.—The relocation under paragraph (1) shall be conducted in a manner that—

(A) minimizes engineering design changes; and

(B) maintains a gradual and smooth interconnection of the corridor with the area described in paragraph (2).

(4) AUTHORIZED USES.—The Secretary may authorize the location of any above ground or underground utility facility, transmission lines, gas pipelines, natural gas pipelines, fiber optics, telecommunications, water lines, wells (including monitoring wells), cable television, and any related appurtenances in the area described in paragraph (1).

(d) EFFECT.—The relocation of the corridor under this section shall not require the Secretary to update the 1998 Las Vegas Valley Resource Management Plan or the 2000 Caliente Management Framework Plan Amendment.

(e) WAIVER OF CERTAIN REQUIREMENTS.—The Secretary shall waive the requirements of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.) that would otherwise be applicable to the holders of the right-of-way corridor described in subsection (a)(2)(A) with respect to an amendment to the legal description of the right-of-way corridor.

TITLE IV—SILVER STATE OFF-HIGHWAY VEHICLE TRAIL

SEC. 141. SILVER STATE OFF-HIGHWAY VEHICLE TRAIL.

(a) DEFINITIONS.—In this section:

(1) SECRETARY.—The term ''Secretary'' means the Secretary of the Interior.

(2) MAP.—The term ''Map'' means the map entitled ''Lincoln County Conservation, Recreation and Development Act Map'' and dated October 1, 2004.

(3) TRAIL.—The term ''Trail'' means the system of trails designated in subsection (b) as the Silver State Off-Highway Vehicle Trail.

(b) DESIGNATION.—The trails that are generally depicted on the Map are hereby designated as the ''Silver State Off-Highway Vehicle Trail''.

(c) MANAGEMENT.—

(1) IN GENERAL.—The Secretary shall manage the Trail in a manner that—

(A) is consistent with motorized and mechanized use of the Trail that is authorized on the date of the enactment of this Act pursuant to applicable Federal and State laws and regulations;

(B) ensures the safety of the people who use the Trail; and

(C) does not damage sensitive habitat or cultural resources.

(2) MANAGEMENT PLAN.—

(A) IN GENERAL.—Not later than 3 years after the date of the enactment of this Act, the Secretary, in consultation with the State, the County, and any other interested persons, shall complete a management plan for the Trail.

(B) COMPONENTS.—The management plan shall—

(i) describe the appropriate uses and management of the Trail;

(ii) authorize the use of motorized and mechanized vehicles on the Trail; and

(iii) describe actions carried out to periodically evaluate and manage the appropriate levels of use and location of the Trail to minimize environmental impacts and prevent damage to cultural resources from the use of the Trail.

(3) MONITORING AND EVALUATION.—

(A) ANNUAL ASSESSMENT.—The Secretary shall annually assess the effects of the use of off-highway vehicles on the Trail and, in consultation with the Nevada Division of Wildlife, assess the effects of the Trail on wildlife and wildlife habitat to minimize environmental impacts and prevent damage to cultural resources from the use of the Trail.

(B) CLOSURE.—The Secretary, in consultation with the State and the County, may temporarily close or permanently reroute, subject to subparagraph (C), a portion of the Trail if the Secretary determines that—

(i) the Trail is having an adverse impact on—

(I) natural resources; or

(II) cultural resources;

(ii) the Trail threatens public safety;

(iii) closure of the Trail is necessary to repair damage to the Trail; or

(iv) closure of the Trail is necessary to repair resource damage.

(C) REROUTING.—Portions of the Trail that are temporarily closed may be permanently rerouted along existing roads and trails on public lands currently open to motorized use if the Secretary determines that such rerouting will not significantly increase or decrease the length of the Trail.

(D) NOTICE.—The Secretary shall provide information to the public regarding any routes on the Trail that are closed under subparagraph (B), including by providing appropriate signage along the Trail.

(4) NOTICE OF OPEN ROUTES.—The Secretary shall ensure that visitors to the Trail have access to adequate notice regarding the routes on the Trail that are open through use of appropriate signage along the Trail and through the distribution of maps, safety education materials, and other information considered appropriate by the Secretary.

(d) NO EFFECT ON NON-FEDERAL LAND AND INTERESTS IN LAND.—Nothing in this section shall be construed to affect ownership, management, or other rights related to non-Federal land or interests in land.

(e) MAP ON FILE.—The Map shall be kept on file at the appropriate offices of the Secretary.

TITLE V—OPEN SPACE PARKS

SEC. 151. OPEN SPACE PARK CONVEYANCE TO LINCOLN COUNTY, NEVADA.

(a) CONVEYANCE.—Notwithstanding sections 202 and 203 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1171, 1712), not later than 1 year after lands are identified by the County, the Secretary shall convey to the County, subject to valid existing rights, for no consideration, all right title, and interest of the United States in and to the parcels of land described in subsection (b).

(b) DESCRIPTION OF LAND.—Up to 15,000 acres of Bureau of Land Management-managed public land in Lincoln County identified by the county in consultation with the Bureau of Land Management.

(c) COSTS.—Any costs relating to any conveyance under subsection (a), including costs for surveys and other administrative costs, shall be paid by the County, or in accordance with section 103(b)(2) of this Act.

(d) USE OF LAND.—

(1) IN GENERAL.—Any parcel of land conveyed to the County under subsection (a) shall be used only for—

(A) the conservation of natural resources; or

(B) public parks.

(2) FACILITIES.—Any facility on a parcel of land conveyed under subsection (a) shall be constructed and managed in a manner consistent with the uses described in paragraph (1).

(e) REVERSION.—If a parcel of land conveyed under subsection (a) is used in a manner that is inconsistent with the uses specified in subsection (d), the parcel of land shall, at the discretion of the Secretary, revert to the United States.

SEC. 152. OPEN SPACE PARK CONVEYANCE TO THE STATE OF NEVADA.

(a) CONVEYANCE.—Notwithstanding section 202 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1712), the Secretary shall convey to the State of Nevada, subject to valid existing rights, for no consideration, all right, title, and interest of the United States in and to the parcels of land described in subsection (b), if there is a written agreement between the State and Lincoln County, Nevada, supporting such a conveyance.

(b) DESCRIPTION OF LAND.—The parcels of land referred to in subsection (a) are the parcels of land depicted as ''NV St. Park Expansion Proposal'' on the map entitled ''Lincoln County Conservation, Recreation, and Development Act Map'' and dated October 1, 2004.

(c) COSTS.—Any costs relating to any conveyance under subsection (a), including costs for surveys and other administrative costs, shall be paid by the State.

(d) USE OF LAND.—

(1) IN GENERAL.—Any parcel of land conveyed to the State under subsection (a) shall be used only for—

(A) the conservation of natural resources; or

(B) public parks.

(2) FACILITIES.—Any facility on a parcel of land conveyed under subsection (a) shall be constructed and managed in a manner consistent with the uses described in paragraph (1).

(e) REVERSION.—If a parcel of land conveyed under subsection (a) is used in a manner that is inconsistent with the uses specified in subsection (d), the parcel of land shall, at the discretion of the Secretary, revert to the United States.

TITLE VI—JURISDICTION TRANSFER

SEC. 161. TRANSFER OF ADMINISTRATIVE JURISDICTION BETWEEN THE FISH AND WILDLIFE SERVICE AND THE BUREAU OF LAND MANAGEMENT.

(a) IN GENERAL.—Administrative jurisdiction over the land described in subsection (b) is transferred from the United States Bureau of Land Management to the United States Fish and Wildlife Service for inclusion in the Desert National Wildlife Range and the administrative jurisdiction over the land described in subsection (c) is transferred from the United States Fish and Wildlife Service to the United States Bureau of Land Management.

(b) DESCRIPTION OF LAND.—The parcel of land referred to in subsection (a) is the approximately 8,503 acres of land administered by the United States Bureau of Land Management as generally depicted on the map entitled ''Lincoln County Conservation, Recreation, and Development Act Map'' and identified as ''Lands to be transferred to the Fish and Wildlife Service'' and dated October 1, 2004.

(c) DESCRIPTION OF LAND.—The parcel of land referred to in subsection (a) is the approximately 8,382 acres of land administered by the United States Fish and Wildlife Service as generally depicted on the map entitled ''Lincoln County Conservation, Recreation, and Development Act Map'' and identified as ''Lands to be transferred to the Bureau of Land Management'' and dated October 1, 2004.

(d) AVAILABILITY.—Each map and legal description shall be on file and available for public inspection in (as appropriate)—

(1) the Office of the Director of the Bureau of Land Management;

(2) the Office of the Nevada State Director of the Bureau of Land Management;

(3) the Ely Field Station of the Bureau of Land Management;

(4) the Caliente Field Office of the Bureau of Land Management;

(5) the Office of the Director of the United States Fish and Wildlife Service; and

(6) the Office of the Desert National Wildlife Complex.

SA 4055. Mr. FRIST (for Mr. DOMENICI) proposed an amendment to the bill H.R. 1630, to revise the boundary of the Petrified Forest National Park in the State of Arizona, and for other purposes; as follows:

On page 2, line 9, strike ''June'' and insert ''July''.

SA 4056. Mr. FRIST (for Mr. DOMENICI) proposed an amendment to the bill S. 1466, to facilitate the transfer of land in the State of Alaska, and for other purposes; as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Alaska Land Transfer Acceleration Act''.

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

SEC. 2. DEFINITIONS.

In this Act:

(1) NATIVE ALLOTMENT.—The term ''Native allotment'' means an allotment claimed under the Act of May 17, 1906 (34 Stat. 197, chapter 2469).

(2) SECRETARY.—The term ''Secretary'' means the Secretary of the Interior.

(3) STATE.—The term ''State'' means the State of Alaska.

TITLE I—STATE SELECTIONS AND CONVEYANCES

SEC. 101. COMMUNITY GRANT SELECTIONS AND CONVEYANCES.

(a) IN GENERAL.—Section 6 of Public Law 85–508 (commonly known as the ''Alaska Statehood Act'') (72 Stat. 340) is amended by adding at the end the following:

''(n) The minimum tract selection size is waived with respect to a selection made by the State of Alaska under subsection (a) for the following selections:

National Forest Community Grant Application Number	Area Name	Est. Acres
209	Yakutat Airport Addition	111
264	Bear Valley (Portage)	120
284	Hyder-Fish Creek	61
310	Elfin Cove	37
384	Edna Bay Admin Site	37
390	Point Hilda	29.''.

(b) COMMUNITY GRANT SELECTIONS.—Section 6 of Public Law 85–508 (commonly known as the ''Alaska Statehood Act'') (72 Stat. 340) (as amended by subsection (a)) is amended by adding at the end the following:

''(o)(1) The State of Alaska may elect to convert a selection filed under subsection (b) to a selection under subsection (a) by notifying the Secretary of the Interior in writing.

''(2) If the State of Alaska makes an election under paragraph (1), the entire selection shall be converted to a selection under subsection (a).

''(3) The Secretary of the Interior shall not convey a total of more than 400,000 acres of public domain land selected under subsection (a) or converted under paragraph (1) to a public domain selection under subsection (a).

''(4) Conversion of a selection under paragraph (1) shall not increase the survey obligation of the United States with respect to the land converted.

''(p) All selection applications of the State of Alaska that are on file with the Secretary of the Interior under the public domain provisions of subsection (a) on the date of enactment of this subsection and any selection applications that are converted to a subsection (a) selection under subsection (o)(1) are approved as suitable for community or recreational purposes.''.

SEC. 102. PRIORITIZATION OF LAND TO BE CONVEYED.

Section 906(h)(2) of the Alaska National Interest Lands Conservation Act (43 U.S.C. 1635(h)(2)) is amended—

(1) by striking ''(2) As soon as practicable'' and inserting the following:

''(2)(A) As soon as practicable'';

(2) by striking ''The sequence of'' and inserting the following:

''(B)(i) The sequence of''; and

(3) by adding at the end the following:

''(ii) In establishing the priorities for tentative approval under clause (i), the State shall—

''(I) in the case of a selection under section 6(a) of Public Law 85–508 (commonly known as the 'Alaska Statehood Act') (72 Stat. 340), include all land selected; or

''(II) in the case of a selection under section 6(b) of that Act—

''(aa) include at least 5,760 acres; or

''(bb) if a waiver has been granted under section 6(g) of that Act or less than 5,760 acres of the entitlement remains, prioritize the selection in such increments as are available for conveyance.''.

SEC. 103. SELECTION OF CERTAIN REVERSIONARY INTERESTS HELD BY THE UNITED STATES.

(a) IN GENERAL.—All reversionary interests held by the United States in land owned by the State or any political subdivision of the State and any Federal land leased by the State under the Act of August 23, 1950 (25 U.S.C. 293b), or the Act of June 4, 1953 (25 U.S.C. 293a), that is prioritized for conveyance by the State under section 906(h)(2) of the Alaska National Interest Lands Conservation Act (43 U.S.C. 1635(h)(2))—

(1) are deemed to be selected; and

(2) may, with the concurrence of the Secretary or the head of the Federal agency with administrative jurisdiction over the land, be conveyed under section 6 of Public Law 85–508 (commonly known as the ''Alaska Statehood Act'') (72 Stat. 340).

(b) EFFECT ON ENTITLEMENT.—If, before the date of enactment of this Act, the entitlement of the State has not been charged with respect to a parcel for which a reversionary interest is conveyed under subsection (a), the total acreage of the parcel shall be charged against the remaining entitlement of the State.

(c) MINIMUM ACREAGE REQUIREMENT NOT APPLICABLE.—The minimum acreage requirement under subsections (a) and (b) of section 6 of Public Law 85–508 (commonly known as the ''Alaska Statehood Act'') (72 Stat. 340) shall not apply to the selection of reversionary interests under subsection (a).

(d) STATE WAIVER.—On conveyance to the State of any reversionary interest selected under subsection (a), the State shall be deemed to have waived all right to any future credit should the reversion not occur.

(e) LIMITATION.—This section shall not apply to—

(1) reversionary interests in land acquired by the United States through the use of amounts from the Exxon Valdez Oil Spill Trust Fund; or

(2) reversionary interests in any land conveyed to the State as a result of the ''Terms and Conditions for Land Consolidation and Management in Cook Inlet Area'' as ratified by section 12 of Public Law 94–204 (43 U.S.C. 1611 note).

SEC. 104. EFFECT OF HYDROELECTRIC WITHDRAWALS.

(a) LAND WITHDRAWN, RESERVED, OR CLASSIFIED FOR POWER SITE OR POWER PROJECT PURPOSES.—If the State has filed a future selection application under section 906(e) of the Alaska National Interest Lands Conservation Act (43 U.S.C. 1635(e)) for land withdrawn, reserved, or classified for power site or power project purposes, notwithstanding the withdrawal, reservation, or classification for power site or power project purposes, the following parcels of land shall be deemed to be vacant, unappropriated, and unreserved within the meaning of Public Law 85–508 (commonly known as the ''Alaska Statehood Act'') (72 Stat. 339):

Serial Number	Area Name	General Selection Application Number
AKAA 058747	Bradley Lake	GS 5141
AKAA 058848	Bradley Lake	GS 44
AKAA 058266	Eagle River/ Ship Creek/ Peters Creek	GS 1429
AKAA 058265	Eagle River/ Ship Creek/ Peters Creek	GS 1209
AKAA 058374	Salmon Creek	GS 327
AKF 031321	Nenana River	GS 2182
AKAA 059056	Solomon Gulch at Valdez	GS 86
DAKFF 085798	Kruzgamepa River Pass Creek	GS 4096.

(b) LIMITATION.—Subsection (a) does not apply to any land that is—

(1) located within the boundaries of a conservation system unit (as defined in section 102 of the Alaska National Interest Lands Conservation Act (16 U.S.C. 3102)); or

(2) otherwise unavailable for conveyance under Public Law 85–508 (commonly known as the ''Alaska Statehood Act'') (72 Stat. 339).

(c) REQUIREMENT APPLICABLE TO NATIONAL FOREST SYSTEM LAND.—Any land described in subsection (a) that is in a unit of the National Forest System shall not be conveyed unless the Secretary of Agriculture approved the State selection before January 3, 1994.

(d) REQUIREMENTS APPLICABLE TO HYDROELECTRIC APPLICATIONS AND LICENSED PROJECTS.—

(1) HYDROELECTRIC APPLICATIONS.—Any selection of land described in subsection (a) that is included in a hydroelectric application—

(A) shall be subject to the jurisdiction of the Federal Energy Regulatory Commission; and

(B) shall not be conveyed while the hydroelectric application is pending.

(2) LICENSED PROJECT.—Any selection of land described in subsection (a) that is included in a licensed project shall be subject to—

(A) the jurisdiction of the Federal Energy Regulatory Commission;

(B) the rights of third parties; and

(C) the right of reentry under section 24 of the Federal Power Act (16 U.S.C. 818).

(e) EFFECT OF SECTION.—Nothing in this section negates or diminishes any right of an applicant to petition for restoration and opening of land withdrawn or classified for power purposes under section 24 of the Federal Power Act (16 U.S.C. 818).

SEC. 105. ENTITLEMENT FOR THE UNIVERSITY OF ALASKA.

(a) IN GENERAL.—As of January 1, 2003, the remaining State entitlement for the benefit

of the University of Alaska under the Act of January 21, 1929 (45 Stat. 1091, chapter 92), is 456 acres.

(b) REVERSIONARY INTERESTS.—The Act of January 21, 1929 (45 Stat. 1091, chapter 92), is amended by adding at the end the following:

''SEC. 3. (a) The State of Alaska (referred to in this Act as the 'State'), acting on behalf of, and with the approval of, the University of Alaska, may select—

''(1) any mineral interest (including an interest in oil or gas) in land located in the State, the unreserved portion of which is owned by the University of Alaska; or

''(2) any reversionary interest held by the United States in land located in the State, the unreserved portion of which is owned by the University of Alaska.

''(b) The total acreage of any parcel of land for which a partial interest is conveyed under subsection (a) shall be charged against the remaining entitlement of the State under this Act.

''(c) In taking title to a reversionary interest, the State, with the approval of the University of Alaska, waives all right to any future acreage credit if the reversion does not occur.

''SEC. 4. The Secretary may survey any vacant, unappropriated, and unreserved land in the State for purposes of allowing selections under this Act.

''SEC. 5. The authorized outstanding selections under this Act shall be not more than—

''(1) 125 percent of the remaining entitlement; plus

''(2) the number of acres of land that are in conflict with land owned by the University of Alaska, as identified in Native allotment applications on record with the Bureau of Land Management.''.

SEC. 106. SETTLEMENT OF REMAINING ENTITLEMENT.

(a) IN GENERAL.—The Secretary may enter into a binding written agreement with the State with respect to—

(1) the exact number and location of acres of land remaining to be conveyed under each entitlement established or confirmed by Public Law 85–508 (commonly known as the ''Alaska Statehood Act'') (72 Stat. 340), from—

(A) the land selected by the State as of January 3, 1994; and

(B) selections under the Act of January 21, 1929 (45 Stat. 1091, chapter 92);

(2) the priority in which the land is to be conveyed;

(3) the relinquishment of selections which are not to be conveyed; and

(4) the survey of the exterior boundaries of the land to be conveyed.

(b) CONSULTATION.—Before entering into an agreement under subsection (a), the Secretary shall ensure that any concerns or issues identified by any Federal agency potentially affected are given consideration.

(c) ERRORS.—The State, by entering into an agreement under subsection (a), shall receive any gain or bear any loss that results from errors in prior surveys, protraction diagrams, or the computation of the ownership of third parties on any land conveyed under an agreement entered into under subsection (a).

(d) AVAILABILITY OF AGREEMENTS.—Agreements entered into under subsection (a) shall be available for public inspection in the appropriate offices of the Department of the Interior.

(e) EFFECT.—Nothing in this section increases the entitlement provided to the State under Public Law 85–508 (commonly known as the ''Alaska Statehood Act'') (72 Stat. 340), or the Act of January 21, 1929 (45 Stat. 1091, chapter 92).

SEC. 107. EFFECT OF FEDERAL MINING CLAIMS.

(a) CONDITIONAL RELINQUISHMENTS.—

(1) IN GENERAL.—To facilitate the conversion of Federal mining claims to State mining claims on land selected or topfiled by the State, a Federal mining claimant may file with the Secretary a voluntary relinquishment of the Federal mining claim conditioned on conveyance of the land to the State.

(2) CONVEYANCE OF RELINQUISHED CLAIM.—The Secretary may convey the land described in the relinquished Federal mining claim to the State if, with respect to the land—

(A) the State has filed as of January 3, 1994—

(i) a selection application under Public Law 85–508 (commonly known as the ''Alaska Statehood Act'') (72 Stat. 339); or

(ii) a future selection application under section 906(e) of the Alaska National Interest Lands Conservation Act 43 U.S.C. 1635(e)); and

(B) the land addressed by the selection application or future selection application is conveyed to the State.

(3) OBLIGATIONS UNDER FEDERAL LAW.—Until the date on which the land is conveyed under paragraph (2), a Federal mining claimant shall be subject to any obligations relating to the land under Federal law.

(4) NO RELINQUISHMENT.—If the land previously encumbered by the relinquished Federal mining claim is not conveyed to the State under paragraph (2), the relinquishment of land under paragraph (1) shall be of no effect.

(b) RIGHTS-OF-WAY; OTHER INTEREST.—On conveyance to the State of a relinquished Federal mining claim under this section, the State shall assume authority over any leases, licenses, permits, rights-of-way, operating plans, other land use authorizations, or reclamation obligations applicable to the relinquished Federal mining claim on the date of conveyance.

SEC. 108. LAND MISTAKENLY RELINQUISHED OR OMITTED.

Notwithstanding the selection deadlines under section 6(a) of Public Law 85–508 (commonly known as the ''Alaska Statehood Act'') (72 Stat. 340)—

(1) the State selection application AA–17607 NFCG 75, located in the Chugach National Forest, is reinstated to the parcels of land originally selected in 1978, which are more particularly described as—

(A) S½ sec. 14, T. 11 S., R. 11 W., of the Copper River Meridian;

(B) S½ sec. 15, T. 11 S., R. 11 W., of the Copper River Meridian;

(C) E½SE¼ sec. 16, T. 11 S., R. 11 W., of the Copper River Meridian;

(D) E½, E½W½, SW¼SW¼ sec. 21, T. 11 S., R. 11 W., of the Copper River Meridian;

(E) N½, SW¼, N½SE¼ sec. 22, T. 11 S., R. 11 W., of the Copper River Meridian;

(F) N½, SW¼, N½SE¼ sec. 23, T. 11 S., R. 11 W., of the Copper River Meridian;

(G) NW¼ sec. 27, T. 11 S., R. 11 W., of the Copper River Meridian; and

(H) N½N½, SE¼NE¼ sec. 28, T. 11 S., R. 11 W., of the Copper River Meridian; and

(2) the following parcels of land are considered topfiled under section 906(e) of the Alaska National Interest Lands Conservation Act (16 U.S.C. 1635(e)):

(A) The parcels of land omitted from the State's topfiling of the Utility and Transportation Corridor, and other parcels of land encompassing the Trans-Alaska Pipeline System, withdrawn by Public Land Order No. 5150 (except for any land within the boundaries of a conservation system unit), which are more particularly described as—

(i) secs. 1–30, 32–36, T. 27 N., R. 11 W., of the Fairbanks Meridian;

(ii) secs. 10, 13—18, 21–28, and 33–36, T. 20 N., R. 13 W., of the Fairbanks Meridian;

(iii) secs. 13, 14, and 15, T. 20 N., R. 14 W., of the Fairbanks Meridian;

(iv) secs. 1–5, 8–17, and 20–28, T. 19 N., R. 13 W., of the Fairbanks Meridian;

(v) secs. 29–32, T. 20 N., R. 16 W., of the Fairbanks Meridian;

(vi) secs. 5–11, 14–23, and 25–36, T. 19 N., R. 16 W., of the Fairbanks Meridian;

(vii) secs. 30 and 31, T. 19 N., R. 15 W., of the Fairbanks Meridian;

(viii) secs. 5 and 6, T. 18 N., R. 15 W., of the Fairbanks Meridian;

(ix) secs. 1–2 and 7–34, T. 16 N., R. 14 W., of the Fairbanks Meridian; and

(x) secs. 4–9, T. 15 N., R. 14 W., of the Fairbanks Meridian.

(B) Secs. 1, 2, 11–14, T. 10 S., R. 42 W., of the Seward Meridian.

TITLE II—ALASKA NATIVE CLAIMS SETTLEMENT ACT

SEC. 201. LAND AVAILABLE AFTER SELECTION PERIOD.

(a) IN GENERAL.—To make certain Federal land available for conveyance to a Native Corporation that has sufficient remaining entitlement, the Secretary may waive the filing deadlines under sections 12 and 16 of the Alaska Native Claims Settlement Act (43 U.S.C. 1611, 1615) if—

(1) the Federal land is—

(A) located in a township in which all or any part of a Native Village is located; or

(B) surrounded by—

(i) land that is owned by the Native Corporation; or

(ii) selected land that will be conveyed to the Native Corporation;

(2) the Federal land—

(A) became available after the end of the original selection period;

(B)(i) was not selected by the Native Corporation because the Federal land was subject to a competing claim or entry; and

(ii) the competing claim or entry has lapsed; or

(C) was previously an unavailable Federal enclave within a Native selection withdrawal area;

(3)(A) the Secretary provides the Native Corporation with a specific time period in which to decline the Federal land; and

(B) the Native Corporation does not submit to the Secretary written notice declining the land within the period established under subparagraph (A); and

(4) the State has voluntarily relinquished any valid State selection or top-filing for the Federal land.

(b) CONGRESSIONAL ACTION.—Subsection (a) shall not apply to a parcel of Federal land if Congress has specifically made other provisions for disposition of the parcel of Federal land.

SEC. 202. COMBINED ENTITLEMENTS.

Section 12 of the Alaska Native Claims Settlement Act (43 U.S.C. 1611) is amended—

(1) in the second sentence of subsection (b), by striking ''Regional Corporation shall'' and inserting ''Regional Corporation shall, not later than October 1, 2005,''; and

(2) by adding at the end the following:

''(f)(1) The entitlements received by any Village Corporation under subsection (a) and the reallocations made to the Village Corporation under subsection (b) may be combined, at the discretion of the Secretary, without—

''(A) increasing or decreasing the combined entitlement; or

''(B) increasing the limitation on selections of Wildlife Refuge System land, National Forest System land, or State-selected land under subsection (a).

''(2) The combined entitlement under paragraph (1) may be fulfilled from selections under subsection (a) or (b) without regard to the entitlement specified in the selection application.

''(3) All selections under a combined entitlement under paragraph (1) shall be adjudicated and conveyed in compliance with this Act.

''(4) Except in a case in which a survey has been contracted for before the date of enactment of this subsection, the combination of entitlements under paragraph (1) shall not require separate patents or surveys, to distinguish between conveyances made to a Village Corporation under subsections (a) and (b).''.

SEC. 203. AUTHORITY TO CONVEY BY WHOLE SECTION.

Section 14(d) of the Alaska Native Claims Settlement Act (43 U.S.C. 1613(d)) is amended—

(1) by striking ''(d) the Secretary'' and inserting the following:

''(d)(1) The Secretary''; and

(2) by adding at the end the following:

''(2) For purposes of applying the rule of approximation under this section, the largest legal subdivision that may be conveyed in excess of the applicable acreage limitation specified in subsection (a) shall be—

''(A) in the case of land managed by the Bureau of Land Management that is not within a conservation system unit, the next whole section;

''(B) in the case of land managed by an agency other than the Bureau of Land Management that is not within a conservation system unit, the next quarter-section and only with concurrence of the agency; or

''(C) in the case of land within a conservation system unit, a quarter of a quarter section, and if the land is managed by an agency other than the Bureau of Land Management, only with the concurrence of that agency.

''(3)(A) If the Secretary determines pursuant to paragraph (2) that an entitlement of a Village Corporation (other than a Village Corporation listed in section 16(a)) or a Regional Corporation may be fulfilled by conveying a specific tract of surveyed or unsurveyed land, the Secretary and the affected Village or Regional Corporation may enter into an agreement providing that all land entitlements under this Act shall be deemed satisfied by conveyance of the specifically identified and agreed upon tract of land.

''(B) An agreement entered into under subparagraph (A) shall be—

''(i) in writing;

''(ii) executed by the Secretary and the Village or Regional Corporation; and

''(iii) authorized by a corporate resolution adopted by the affected Village or Regional Corporation.

''(C) After execution of an agreement under subparagraph (A) and conveyance of the agreed upon tract to the affected Village or Regional Corporation—

''(i) the Secretary shall not make any further adjustments to calculations relating to acreage entitlements of the Village or Regional Corporation; and

''(ii) the Village or Regional Corporation shall not be entitled to any further conveyances under this Act.

''(D) A Village or Regional Corporation shall not be eligible to receive land under subparagraph (A) if the Village or Regional Corporation has received the full land entitlement of the Village or Regional Corporation through—

''(i) an actual conveyance of land; or

''(ii) a previous agreement.

''(E) If the calculations of the Secretary indicate that the final survey boundaries for any Village or Regional Corporation entitlement for which an agreement has not been entered into under this paragraph include acreage in a quantity that exceeds the statutory entitlement of the corporation by 1/10 of 1 percent or less, but not more than the applicable acreage limitation specified in paragraph (2)—

''(i) the entitlement shall be considered satisfied by the conveyance of the surveyed area; and

''(ii) the Secretary shall not change the survey for the sole purpose of an acreage adjustment.

''(F) This paragraph does not limit or otherwise affect the ability of a Village or Regional Corporation to enter into land exchanges with the United States.''.

SEC. 204. CONVEYANCE OF CEMETERY SITES AND HISTORICAL PLACES.

Section 14(h)(1) of the Alaska Native Claims Settlement Act (43 U.S.C. 1613(h)(1)) is amended—

(1) by striking ''(1) The Secretary'' and inserting the following:

''(1)(A) The Secretary'';

(2) by striking ''Only title'' and inserting the following:

''(B) Only title''; and

(3) by adding at the end the following:

''(C)(i) Notwithstanding acreage allocations made before the date of enactment of this subparagraph, the Secretary may convey any cemetery site or historical place—

''(I) with respect to which there is an application on record with the Secretary on the date of enactment of this paragraph; and

''(II) that is eligible for conveyance.

''(ii) Clause (i) shall also apply to any of the 188 closed applications that are determined to be eligible and reinstated under Secretarial Order No. 3220 dated January 5, 2001.

''(D) No applications submitted for the conveyance of land under subparagraph (A) that were closed before the date of enactment of this paragraph may be reinstated other than those specified in subparagraph (C)(ii).

''(E) After the date of enactment of this paragraph—

''(i) no application may be filed for the conveyance of land under subparagraph (A); and

''(ii) no pending application may be amended, except as necessary to conform the application to the description in the certification of eligibility of the Bureau of Indian Affairs.

''(F) Unless, not later than 1 year after the date of enactment of this paragraph, a Regional Corporation that has filed an application for a historic place submits to the Secretary a statement on the significance of and the location of the historic place—

''(i) the application shall not be valid; and

''(ii) the Secretary shall reject the application.

''(G) The State and the head of the Federal agency with administrative jurisdiction over the land shall have 30 days to provide written comments to the Secretary—

''(i) identifying any third party interest to which a conveyance under subparagraph (A) should be made subject; and

''(ii) describing any easements recommended for reservation.''.

SEC. 205. ALLOCATIONS BASED ON POPULATION.

Section 14(h)(8) of the Alaska Native Claims Settlement Act (43 U.S.C. 1613(h)(8)) is amended by adding at the end the following:

''(C)(i) Notwithstanding any other provision of this subsection, as soon as practicable after enactment of this subparagraph, the Secretary shall allocate to a Regional Corporation eligible for an allocation under subparagraph (A) the Regional Corporation's share of 200,000 acres from lands withdrawn under this subsection, to be credited against acreage to be allocated to the Regional Corporation under subparagraph (A).

''(ii) Clause (i) shall apply to Chugach Alaska Corporation pursuant to the terms of the 1982 CNI Settlement Agreement.

''(iii) With respect to Cook Inlet Region, Inc., or Koniag, Inc.—

''(I) clause (i) shall not apply; and

''(II) the portion of the 200,000 acres allocated to Cook Inlet Region Inc. or Koniag, Inc., shall be retained by the United States.

''(iv) This subparagraph shall not affect any prior agreement entered into by a Regional Corporation other than the agreements specifically referred to in this subparagraph.''.

SEC. 206. AUTHORITY TO WITHDRAW LAND.

Section 14(h)(10) of the Alaska Native Claims Settlement Act (43 U.S.C. 1613(h)(10)) is amended—

(1) by striking ''(10) Notwithstanding'' and inserting the following:

''(10)(A) Notwithstanding''; and

(2) by adding at the end the following:

''(B) If a Regional Corporation does not have enough valid selections on file to fulfill the remaining entitlement of the Regional Corporation under paragraph (8), the Secretary may use the withdrawal authority under subparagraph (A) to withdraw land that is vacant, unappropriated, and unreserved on the date of enactment of this subparagraph for selection by, and conveyance to, the Regional Corporation to fulfill the entitlement.''.

SEC. 207. REPORT ON WITHDRAWALS.

Not later than 18 months after the date of enactment of this Act, the Secretary shall—

(1) review the withdrawals made pursuant to section 17(d)(1) of the Alaska Native Claims Settlement Act (43 U.S.C. 1616(d)(1)) to determine if any portion of the lands withdrawn pursuant to that provision can be opened to appropriation under the public land laws or if their withdrawal is still needed to protect the public interest in those lands;

(2) provide an opportunity for public notice and comment, including recommendations with regard to lands to be reviewed under paragraph (1); and

(3) submit to the Committee on Energy and Natural Resources of the Senate and the Committee on Resources of the House of Representatives a report that identifies any portion of the lands so withdrawn that can be opened to appropriation under the public land laws consistent with the protection of the public interest in these lands.

SEC. 208. AUTOMATIC SEGREGATION OF LAND FOR UNDERSELECTED VILLAGE CORPORATIONS.

Section 22(j) of the Alaska Native Claims Settlement Act (43 U.S.C. 1621(j)) is amended by adding at the end the following:

''(3) In lieu of withdrawal under paragraph (2), land may be segregated from all other forms of appropriation for the purposes described in that paragraph if—

''(A) the Secretary and the Village Corporation enter into an agreement identifying the land for selection; and

''(B) the Village Corporation files an application for selection of the land.''.

SEC. 209. SETTLEMENT OF REMAINING ENTITLEMENT.

(a) IN GENERAL.—The Secretary may enter into a binding written agreement with a Native Corporation relating to—

(1) the land remaining to be conveyed to the Native Corporation under the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.) from land selected as of September 1, 2004, or land made available under section 201, 206, or 208 of this Act;

(2) the priority in which the land is to be conveyed;

(3) the relinquishment of selections which are not to be conveyed;

(4) the selection entitlement to which selections are to be charged, regardless of the entitlement under which originally selected;

(5) the survey of the exterior boundaries of the land to be conveyed;

(6) the additional survey to be performed under section 14(c) of the Alaska Native Claims Settlement Act (43 U.S.C. 1613(c)); and

(7) the resolution of conflicts with Native allotment applications.

(b) REQUIREMENTS.—An agreement under subsection (a)—

(1) shall be authorized by a resolution of the Native Corporation entering into the agreement; and

(2) shall include a statement that the entitlement of the Native Corporation shall be considered complete on execution of the agreement.

(c) CORRECTION OF CONVEYANCE DOCUMENTS.—In an agreement under subsection (a), the Secretary and the Native Corporation may agree to make technical corrections to the legal description in the conveyance documents for easements previously reserved so that the easements provide the access intended by the original reservation.

(d) CONSULTATION.—Before entering into an agreement under subsection (a), the Secretary shall ensure that the concerns or issues identified by the State and all Federal agencies potentially affected by the agreement are given consideration.

(e) ERRORS.—Any Native Corporation entering into an agreement under subsection (a) shall receive any gain or bear any loss resulting from errors in prior surveys, protraction diagrams, or computation of the ownership of third parties on any land conveyed.

(f) EFFECT.—

(1) IN GENERAL.—An agreement under subsection (a) shall not—

(A) affect the obligations of Native Corporations under prior agreements; or

(B) result in a Native Corporation relinquishing valid selections of land in order to qualify for the withdrawal of other tracts of land.

(2) EFFECT ON SUBSURFACE RIGHTS.—The terms of an agreement entered into under subsection (a) shall be binding on a Regional Corporation with respect to the location and quantity of subsurface rights of the Regional Corporation under section 14(f) of the Alaska Native Claims Settlement Act (43 U.S.C. 1613(f)).

(3) EFFECT ON ENTITLEMENT.—Nothing in this section increases the entitlement provided to any Native Corporation under—

(A) the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.); or

(B) the Alaska National Interest Lands Conservation Act (16 U.S.C. 3101 et seq.).

(g) BOUNDARIES OF A NATIVE VILLAGE.—An agreement entered into under subsection (a) may not define the boundaries of a Native Village.

(h) AVAILABILITY OF AGREEMENTS.—An agreement entered into under subsection (a) shall be available for public inspection in the appropriate offices of the Department of the Interior.

TITLE III—NATIVE ALLOTMENTS

SEC. 301. CORRECTION OF CONVEYANCE DOCUMENTS.

Section 18 of the Alaska Native Claims Settlement Act (43 U.S.C. 1617) is amended by adding at the end the following:

''(d)(1) If an allotment application is valid or would have been approved under section 905 of the Alaska National Interests Lands Conservation Act (43 U.S.C. 1634) had the land described in the application been in Federal ownership on December 2, 1980, the Secretary may correct a conveyance to a Native Corporation or to the State that includes land described in the allotment application to exclude the described allotment land with the written concurrence of the Native Corporation or the State.

''(2) A written concurrence shall—

''(A) include a finding that the land description proposed by the Secretary is acceptable; and

''(B) attest that the Native Corporation or the State has not—

''(i) granted any third party rights or taken any other action that would affect the ability of the United States to convey full title under the Act of May 17, 1906 (34 Stat. 197, chapter 2469); and;

''(ii) stored or allowed the deposit of hazardous waste on the land.

''(3) On receipt of an acceptable written concurrence, the Secretary, shall—

''(A) issue a corrected conveyance document to the State or Native Corporation, as appropriate; and

''(B) issue a certificate of allotment to the allotment applicant.

''(4) No documents of reconveyance from the State or an Alaska Native Corporation or evidence of title, other than the written concurrence and attestation described in paragraph (2), are necessary to use the procedures authorized by this subsection.''.

SEC. 302. TITLE RECOVERY OF NATIVE ALLOTMENTS.

(a) IN GENERAL.—In lieu of the process for the correction of conveyance documents available under subsection (d) of section 18 of the Alaska Native Claims Settlement Act (as added by section 301), any Native Corporation may elect to reconvey all of the land encompassed by an allotment claim or a portion of the allotment claim agreeable to the applicant in satisfaction of the entire claim by tendering a valid and appropriate deed to the United States.

(b) CERTIFICATE OF ALLOTMENT.—If the United States determines that the allotment application is valid or would have been approved under section 905 of the Alaska National Interests Lands Conservation Act (42 U.S.C. 1634) had the land described in the allotment application been in Federal ownership on December 2, 1980, and obtains title evidence acceptable under the Department of Justice title standards, the United States shall accept the deed from the Native Corporation and issue a certificate of allotment to the allotment applicant.

(c) PROBATE NOT REQUIRED.—If the Native Corporation reconveys the entire interest of the Native Corporation in the allotment claim of a deceased applicant, the United States may accept the deed and issue the certificate of allotment without waiting for a determination of heirs or the approval of a will.

(d) NO LIABILITY.—The United States shall not be subject to liability under Federal or State law for the presence of any hazardous substance in land or an interest in land solely as a result of any reconveyance to, and transfer by, the United States of land or interests in land under this section.

SEC. 303. NATIVE ALLOTMENT REVISIONS ON LAND SELECTED BY OR CONVEYED TO A NATIVE CORPORATION.

Section 18 of the Alaska Native Claims Settlement Act (43 U.S.C. 1617) (as amended by section 301) is amended by adding at the end the following:

''(e)(1) An allotment applicant who had an application pending before the Department of the Interior on December 18, 1971, and whose application is still open on the records of the Department of the Interior as of the date of enactment of this subsection may revise the land description in the application to describe land other than the land that the applicant originally intended to claim if—

''(A) the application—

''(i) describes land selected by or conveyed by interim conveyance or patent to a Native Corporation formed to receive benefits under this Act; or

''(ii) otherwise conflicts with an interest in land granted to a Native Corporation by the United States;

''(B) the revised land description describes land selected by or conveyed by interim conveyance or patent to a Native Corporation of approximately equal acreage in substitution for the land described in the original application;

''(C) the Director of the Bureau of Land Management has not adopted a final plan of survey for the final entitlement of the Native Corporation or its successor in interest; and

''(D) the Native Corporation that selected the land or its successor in interest provides a corporate resolution authorizing reconveyance or relinquishment to the United States of the land, or interest in land, described in the revised application.

''(2) The land description in an allotment application may not be revised under this section unless the Secretary has determined—

''(A) that the allotment application is valid or would have been approved under section 905 of the Alaska National Interest Lands Conservation Act (43 U.S.C. 1634) had the land in the allotment application been in Federal ownership on December 2, 1980;

''(B) in consultation with the administering agency, that the proposed revision would not create an isolated inholding within a conservation system unit (as defined in section 102 of the Alaska National Interest Lands Conservation Act (16 U.S.C. 3102)); and

''(C) that the proposed revision will facilitate completion of a land transfer in the State.

''(3)(A) On obtaining title evidence acceptable under Department of Justice title standards and acceptance of a reconveyance or relinquishment from a Native Corporation under paragraph (1), the Secretary shall issue a Native allotment certificate to the applicant for the land reconveyed or relinquished by the Native Corporation.

''(B) Any allotment revised under this section shall, when allotted, be made subject to any easement, trail, right-of-way, or any third-party interest (other than a fee interest) in existence on the revised allotment land on the date of revision.''.

SEC. 304. COMPENSATORY ACREAGE.

(a) IN GENERAL.—The Secretary shall adjust the acreage entitlement computation records for the State or an affected Native Corporation to account for any difference in the amount of acreage between the corrected description and the previous description in any conveyance document as a result of actions taken under section 18(d) of the Alaska Native Claims Settlement Act (as added by section 301) or section 18(e) of the Alaska Native Claims Settlement Act (as added by section 303), or for other voluntary reconveyances to the United States for the purpose of facilitating land transfers in the State.

(b) LIMITATION.—No adjustment to the acreage conveyance computations shall be made where the State or an affected Native Corporation retains a partial estate in the described allotment land.

(c) AVAILABILITY OF ADDITIONAL LAND.—If, as a result of implementation under section 18(d) of the Alaska Native Claims Settlement Act (as added by section 301) or any voluntary reconveyance to facilitate a land transfer, a Village Corporation has insufficient remaining selections from which to receive its full entitlement under the Alaska Native Claims Settlement Act, the Secretary may use the authority and procedures available under paragraph (3) of section 22(j) of

the Alaska Native Claims Settlement Act (43 U.S.C. 1621(j)) (as added by section 208) to make additional land available for selection by the Village Corporation.

SEC. 305. REINSTATEMENTS AND RECONSTRUCTIONS.

Section 18 of the Alaska Native Claims Settlement Act (43 U.S.C. 1617) (as amended by section 303) is amended by adding at the end the following:

''(f)(1) If an applicant for a Native allotment filed under the Act of May 17, 1906 (34 Stat. 197, chapter 2469) petitions the Secretary to reinstate a previously closed Native allotment application or to accept a reconstructed copy of an application claimed to have been timely filed with an agency of the Department of the Interior, the United States—

''(A) may seek voluntary reconveyance of any land described in the application that is reinstated or reconstructed after the date of enactment of this subsection; but

''(B) shall not file an action in any court to recover title from a current landowner.

''(2) A certificate of allotment that is issued for any allotment application for which a request for reinstatement or reconstruction is received or accepted after the date of enactment of this subsection shall be made subject to any Federal appropriation, trail, right-of-way, easement, or existing third party interest of record, including third party interests created by the State, without regard to the date on which the Native allotment applicant initiated use and occupancy.''.

SEC. 306. AMENDMENTS TO SECTION 41 OF THE ALASKA NATIVE CLAIMS SETTLEMENT ACT.

Section 41(b) of the Alaska Native Claims Settlement Act (43 U.S.C. 1629g(b)) is amended—

(1) in paragraph (1)(A), by inserting before the semicolon at the end the following: ''(except that the term 'nonmineral', as used in that Act, shall for the purpose of this subsection be defined as provided in section 905(a)(3) of the Alaska National Interest Lands Conservation Act (42 U.S.C. 1634(a)(3)), except that such definition shall not apply to land within a conservation system unit)''; and

(2) in paragraph (2)—

(A) by redesignating subparagraphs (A), (B), and (C) as clauses (i), (ii), and (iii), respectively, and indenting the clauses appropriately;

(B) by inserting ''(A)'' after ''(2)'';

(C) in clause (ii) (as redesignated by subparagraph (A)), by inserting after ''Department of Veterans Affairs'' the following: ''or based on other evidence acceptable to the Secretary''; and

(D) by adding at the end the following:

''(B)(i) If the Secretary requests that the Secretary of Veterans Affairs make a determination whether a veteran died as a direct consequence of a wound received in action, the Secretary of Veterans Affairs shall, within 60 days of receipt of the request—

''(I) provide a determination to the Secretary if the records of the Department of Veterans Affairs contain sufficient information to support such a determination; or

''(II) notify the Secretary that the records of the Department of Veterans Affairs do not contain sufficient information to support a determination and that further investigation will be necessary.

''(ii) Not later than 1 year after notification to the Secretary that further investigation is necessary, the Department of Veterans Affairs shall complete the investigation and provide a determination to the Secretary.''.

TITLE IV—FINAL PRIORITIES; CONVEYANCE AND SURVEY PLANS

SEC. 401. DEADLINE FOR ESTABLISHMENT OF REGIONAL PLANS.

(a) IN GENERAL.—Not later than 18 months after the date of enactment of this Act, the Secretary, in coordination and consultation with Native Corporations, other Federal land management agencies, and the State, shall update and revise the 12 preliminary Regional Conveyance and Survey Plans.

(b) INCLUSIONS.—The updated and revised plans under subsection (a) shall identify any conflicts to be resolved and recommend any actions that should be taken to facilitate the finalization of land conveyances in a region by 2009.

SEC. 402. DEADLINE FOR ESTABLISHMENT OF VILLAGE PLANS.

Not later than 30 months after the date of enactment of this Act, the Secretary, in coordination with affected Federal land management agencies, the State, and Village Corporations, shall complete a final closure plan with respect to the entitlements for each Village Corporation under the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.).

SEC. 403. FINAL PRIORITIZATION OF ANCSA SELECTIONS.

(a) IN GENERAL.—Any Native Corporation that has not received its full entitlement or entered into a voluntary, negotiated settlement of final entitlement shall submit the final, irrevocable priorities of the Native Corporation—

(1) in the case of a Village, Group, or Urban Corporation entitlement, not later than 36 months after the date of enactment of this Act; and

(2) in the case of a Regional Corporation entitlement, not later than 42 months after the date of enactment of this Act.

(b) ACREAGE LIMITATIONS.—The priorities submitted under subsection (a) shall not exceed land that is the greater of—

(1) not more than 125 percent of the remaining entitlement; or

(2) not more than 640 acres in excess of the remaining entitlement.

(c) CORRECTIONS.—

(1) IN GENERAL.—Except as provided in paragraph (2), the priorities submitted under subsection (a) may not be revoked, rescinded, or modified by the Native Corporation.

(2) TECHNICAL CORRECTIONS.—Not later than 90 days after the date of receipt of a notification by the Secretary that there appears to be a technical error in the priorities, the Native Corporation may correct the technical error in accordance with any recommendations of, and in a manner prescribed by or acceptable to, the Secretary.

(d) RELINQUISHMENT.—

(1) IN GENERAL.—As of the date on which the Native Corporation submits its final priorities under subsection (a)—

(A) any unprioritized, remaining selections of the Native Corporation—

(i) are relinquished, but any part of the selections may be reinstated for the purpose of correcting a technical error; and

(ii) have no further segregative effect; and

(B) all withdrawals under sections 11 and 16 of the Alaska Native Claims Settlement Act (43 U.S.C. 1610, 1615) under the relinquished selections are terminated.

(2) RECORDS.—All relinquishments under paragraph (1) shall be included in Bureau of Land Management land records.

(e) FAILURE TO SUBMIT PRIORITIES.—If a Native Corporation fails to submit priorities by the deadline specified in subsection (a)—

(1) with respect to a Native Corporation that has priorities on file with the Secretary, the Secretary—

(A) shall convey to the Native Corporation the remaining entitlement of the Native Corporation, as determined based on the most recent priorities of the Native Corporation on file with the Secretary and in accordance with the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.); and

(B) may reject any selections not needed to fulfill the entitlement; or

(2) with respect to a Native Corporation that does not have priorities on file with the Secretary, the Secretary shall satisfy the entitlement by conveying land selected by the Secretary, in consultation with the appropriate Native Corporation, the Federal land managing agency with administrative jurisdiction over the land to be conveyed, and the State, that, to the maximum extent practicable, is—

(A) compact;

(B) contiguous to land previously conveyed to the Native Corporation; and

(C) consistent with the applicable preliminary Regional Conveyance and Survey Plan referred to in section 401.

(f) PLAN OF CONVEYANCE.—

(1) IN GENERAL.—The Secretary shall—

(A) identify any Native Corporation that does not have sufficient priorities on file;

(B) develop priorities for the Native Corporation in accordance with subsection (e); and

(C) provide to the Native Corporation a plan of conveyance based on the priorities developed under subparagraph (B).

(2) FINALIZED SELECTIONS.—Not later than 180 days after the date on which the Secretary provides a plan of conveyance to the affected Village, Group, or Urban Corporation and the Regional Corporation, the Regional Corporation shall finalize any Regional selections that are in conflict with land selected by the Village, Group, or Urban Corporation that has not been prioritized by the deadline under subsection (a)(1).

(g) DISSOLVED OR LAPSED CORPORATIONS.—

(1)(A) If a Native Corporation is lapsed or dissolved at the time final priorities are required to be filed under this section and does not have priorities on file with the Secretary, the Secretary shall establish a deadline for the filing of priorities that shall be one year from the provisions of notice of the deadline.

(B) To fulfill the notice requirement under paragraph (1), the Secretary shall—

(i) publish notice of the deadline to a lapsed or dissolved Native Corporation in a newspaper of general circulation nearest the locality where the affected land is located; and

(ii) seek to notify in writing the last known shareholders of the lapsed or dissolved corporation.

(C) If a Native Corporation does not file priorities with the Secretary before the deadline set pursuant to subparagraph (A), the Secretary shall notify Congress.

(2) If a Native Corporation with final priorities on file with the Bureau of Land Management is lapsed or dissolved, the United States—

(A) shall continue to administer the prioritized selected land under applicable law; but

(B) may reject any selections not needed to fulfill the lapsed or dissolved Native Corporation's entitlement.

SEC. 404. FINAL PRIORITIZATION OF STATE SELECTIONS.

(a) FILING OF FINAL PRIORITIES.—

(1) IN GENERAL.—The State shall, not later than the date that is 4 years after the date of enactment of this Act, in accordance with section 906(f)(1) of the Alaska National Interest Lands Conservation Act (43 U.S.C. 1635(f)(1)), file final priorities with the Secretary for all land grant entitlements to the

State which remain unsatisfied on the date of the filing.

(2) RANKING.—All selection applications on file with the Secretary on the date specified in paragraph (1) shall—

(A) be ranked on a Statewide basis in order of priority; and

(B) include an estimate of the acreage included in each selection.

(3) INCLUSIONS.—The State shall include in the prioritized list land which has been top-filed under section 906(e) of the Alaska National Interest Lands Conservation Act (43 U.S.C. 1635(e)).

(4) ACREAGE LIMITATION.—

(A) IN GENERAL.—Acreage for top-filings shall not be counted against the 125 percent limitation established under section 906(f)(1) of the Alaska National Interest Lands Conservation Act (43 U.S.C. 1635(f)(1)).

(B) RELINQUISHMENT.—

(i) IN GENERAL.—The State shall relinquish any selections that exceed the 125 percent limitation.

(ii) FAILURE TO RELINQUISH.—If the State fails to relinquish a selection under clause (i), the Secretary shall reject the selection.

(5) LOWER-PRIORITY SELECTIONS.—Notwithstanding the prioritization of selection applications under paragraph (1), if the Secretary reserves sufficient entitlements for the top-filed selections, the Secretary may continue to convey lower-priority selections.

(b) DEADLINE FOR PRIORITIZATION.—

(1) IN GENERAL.—The State shall irrevocably prioritize sufficient selections to allow the Secretary to complete transfer of 101,000,000 acres by September 30, 2009.

(2) REPRIORITIZATION.—Any selections remaining after September 30, 2009, may be reprioritized.

(c) FINANCIAL ASSISTANCE.—The Secretary may, using amounts made available to carry out this Act, provide financial assistance to other Federal agencies, the State, and Native Corporations and entities to assist in completing the transfer of land by September 30, 2009.

TITLE V—ALASKA LAND CLAIMS HEARINGS AND APPEALS

SEC. 501. ALASKA LAND CLAIMS HEARINGS AND APPEALS.

(a) ESTABLISHMENT.—The Secretary may establish a field office of the Office of Hearings and Appeals in the State to decide matters within the jurisdiction of the Department of the Interior involving hearings and appeals, and other review functions of the Secretary regarding land transfer decisions and Indian probates in the State.

(b) APPOINTMENTS.—For purposes of carrying out subsection (a), the Secretary shall appoint administrative law judges selected in accordance with section 3105 of title 5, United States Code, and members of the Interior Board of Land Appeals.

TITLE VI—REPORT AND AUTHORIZATION OF APPROPRIATIONS

SEC. 601. REPORT.

(a) IN GENERAL.—Not later than 3 years after the date of enactment of this Act, the Secretary shall submit to Congress a report on the status of the implementation of this Act.

(b) CONTENTS.—The report shall—

(1) describe the status of conveyances to Alaska Natives, Native Corporations, and the State; and

(2) include recommendations for completing the conveyances required by this Act.

SEC. 602. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as are necessary to carry out the purposes of this Act.

SA 4057. Mr. FRIST (for Mr. BINGAMAN) proposed an amendment to the bill S. 2656, to establish a National Commission on the Quincentennial of the discovery of Florida by Ponce de Leon; as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Ponce de Leon Discovery of Florida Quincentennial Commission Act''.

SEC. 2. DEFINITIONS.

In this Act:

(1) COMMISSION.—The term ''Commission'' means the National Commission on the Quincentennial of the discovery of Florida by Ponce de Leon established under section 3(a).

(2) GOVERNOR.—The term ''Governor'' means the Governor of the State of Florida.

(3) QUINCENTENNIAL.—The term ''Quincentennial'' means the 500th anniversary of the discovery of Florida by Ponce de Leon.

SEC. 3. ESTABLISHMENT OF COMMISSION.

(a) ESTABLISHMENT.—There is established a commission to be known as the ''National Commission on the Quincentennial of the discovery of Florida by Ponce de Leon''.

(b) DUTIES.—The Commission shall plan, encourage, coordinate, and conduct the commemoration of the Quincentennial.

(c) MEMBERSHIP.—

(1) COMPOSITION.—The Commission shall be composed of 10 members, including—

(A) 2 members, to be appointed by the President, on the recommendation of the Majority Leader and the Minority Leader of the Senate;

(B) 2 members, to be appointed by the President, on the recommendation of the Speaker of the House of Representatives and the Minority Leader of the House of Representatives; and

(C) 4 members, to be appointed by the President, taking into consideration the recommendations of the Governor, the Director of the National Park Service, and the Secretary of the Smithsonian Institution.

(2) CRITERIA.—A member of the Commission shall be chosen from among individuals that have demonstrated a strong sense of public service, expertise in the appropriate professions, scholarship, and abilities likely to contribute to the fulfillment of the duties of the Commission.

(3) DATE OF APPOINTMENTS.—Not later than 60 days after the date of enactment of this Act, the members of the Commission described in paragraph (1) shall be appointed.

(d) TERM; VACANCIES.—

(1) TERM.—A member shall be appointed for the life of the Commission.

(2) VACANCY.—A vacancy on the Commission—

(A) shall not affect the powers of the Commission; and

(B) shall be filled in the same manner as the original appointment was made.

(e) INITIAL MEETING.—Not later than 30 days after the date on which all members of the Commission have been appointed, the Commission shall hold the initial meeting of the Commission.

(f) MEETINGS.—The Commission shall meet annually at the call of the co-chairpersons described under subsection (h).

(g) QUORUM.—A quorum of the Commission for decision making purposes shall be 5 members, except that a lesser number of members, as determined by the Commission, may conduct meetings.

(h) CO-CHAIRPERSONS.—The President shall designate 2 of the members of the Commission as co-chairpersons of the Commission.

SEC. 4. DUTIES.

(a) IN GENERAL.—The Commission shall—

(1) plan and develop activities appropriate to commemorate the Quincentennial including a limited number of proposed projects to be undertaken by the appropriate Federal departments and agencies that commemorate the Quincentennial by seeking to harmonize and balance the important goals of ceremony and celebration with the equally important goals of scholarship and education;

(2) consult with and encourage appropriate Federal departments and agencies, State and local governments, Indian tribal governments, elementary and secondary schools, colleges and universities, foreign governments, and private organizations to organize and participate in Quincentennial activities commemorating or examining—

(A) the history of Florida;

(B) the discovery of Florida;

(C) the life of Ponce de Leon;

(D) the myths surrounding Ponce de Leon's search for gold and for the ''fountain of youth'';

(E) the exploration of Florida; and

(F) the beginnings of the colonization of North America; and

(3) coordinate activities throughout the United States and internationally that relate to the history and influence of the discovery of Florida.

(b) REPORTS.—

(1) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the Commission shall submit to the President and the Committee on Energy and Natural Resources of the Senate and the Committee on Resources of the House of Representatives a comprehensive report that includes specific recommendations for—

(A) the allocation of financial and administrative responsibility among participating entities and persons with respect to commemoration of the Quincentennial; and

(B) the commemoration of the Quincentennial and related events through programs and activities, including—

(i) the production, publication, and distribution of books, pamphlets, films, electronic publications, and other educational materials focusing on the history and impact of the discovery of Florida on the United States and the world;

(ii) bibliographical and documentary projects, publications, and electronic resources;

(iii) conferences, convocations, lectures, seminars, and other programs;

(iv) the development of programs by and for libraries, museums, parks and historic sites, including international and national traveling exhibitions;

(v) ceremonies and celebrations commemorating specific events;

(vi) the production, distribution, and performance of artistic works, and of programs and activities, focusing on the national and international significance of the discovery of Florida; and

(vii) the issuance of commemorative coins, medals, certificates of recognition, and stamps.

(2) ANNUAL REPORT.—The Commission shall submit an annual report that describes the activities, programs, expenditures, and donations of or received by the Commission to—

(A) the President; and

(B) the Committee on Energy and Natural Resources of the Senate and the Committee on Resources of the House of Representatives.

(3) FINAL REPORT.—Not later than December 31, 2013, the Commission shall submit a final report that describes the activities, programs, expenditures, and donations of or received by the Commission to—

(A) the President; and

(B) the Committee on Energy and Natural Resources of the Senate and the Committee on Resources of the House of Representatives.

(c) ASSISTANCE.—In carrying out this Act, the Commission shall consult, cooperate with, and seek advice and assistance from appropriate Federal departments and agencies, including the Department of the Interior.

(d) COORDINATION OF ACTIVITIES.—In carrying out the duties of the Commission, the Commission, in consultation with the Secretary of State, may coordinate with the Government of Spain and political subdivisions in Spain for the purposes of exchanging information and research and otherwise involving the Government of Spain, as appropriate, in the commemoration of the Quincentennial.

SEC. 5. POWERS OF THE COMMISSION.

(a) IN GENERAL.—The Commission may provide for—

(1) the preparation, distribution, dissemination, exhibition, and sale of historical, commemorative, and informational materials and objects that will contribute to public awareness of, and interest in, the Quincentennial, except that any commemorative coin, medal, or postage stamp recommended to be issued by the United States shall be sold only by a Federal department or agency;

(2) competitions and awards for historical, scholarly, artistic, literary, musical, and other works, programs, and projects relating to the Quincentennial;

(3) a Quincentennial calendar or register of programs and projects;

(4) a central clearinghouse for information and coordination regarding dates, events, places, documents, artifacts, and personalities of Quincentennial historical and commemorative significance; and

(5) the design and designation of logos, symbols, or marks for use in connection with the commemoration of the Quincentennial and shall establish procedures regarding their use.

(b) ADVISORY COMMITTEE.—The Commission may appoint such advisory committees as the Commission determines necessary to carry out the purposes of this Act.

SEC. 6. ADMINISTRATION.

(a) LOCATION OF OFFICE.—

(1) PRINCIPAL OFFICE.—The principal office of the Commission shall be in St. Augustine, Florida.

(2) SATELLITE OFFICE.—The Commission may establish a satellite office in Washington, D.C.

(b) STAFF.—

(1) APPOINTMENT OF DIRECTOR AND DEPUTY DIRECTOR.—

(A) IN GENERAL.—The co-chairpersons, with the advice of the Commission, may appoint and terminate a director and deputy director without regard to the civil service laws (including regulations).

(B) DELEGATION TO DIRECTOR.—The Commission may delegate such powers and duties to the director as may be necessary for the efficient operation and management of the Commission.

(2) STAFF PAID FROM FEDERAL FUNDS.—The Commission may use any available Federal funds to appoint and fix the compensation of not more than 4 additional personnel staff members, as the Commission determines necessary.

(3) STAFF PAID FROM NON-FEDERAL FUNDS.—The Commission may use any available non-Federal funds to appoint and fix the compensation of additional personnel.

(4) COMPENSATION.—

(A) MEMBERS.—

(i) IN GENERAL.—A member of the Commission shall serve without compensation.

(ii) TRAVEL EXPENSES.—A member of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for an employee of an agency under subchapter I of chapter 57 of title 5, United States Code, while away from the home or regular place of business of the member in the performance of the duties of the Commission.

(B) STAFF.—

(i) IN GENERAL.—The co-chairpersons of the Commission may fix the compensation of the director, deputy director, and other personnel without regard to the provisions of chapter 51 and subchapter III of chapter 53 of title 5, United States Code, relating to classification of positions and General Schedule pay rates.

(ii) MAXIMUM RATE OF PAY.—

(I) DIRECTOR.—The rate of pay for the director shall not exceed the rate payable for level IV of the Executive Schedule under section 5315 of title 5, United States Code.

(II) DEPUTY DIRECTOR.—The rate of pay for the deputy director shall not exceed the rate payable for level V of the Executive Schedule under section 5316 of title 5, United States Code.

(III) STAFF MEMBERS.—The rate of pay for staff members appointed under paragraph (2) shall not exceed the rate payable for grade GS-15 of the General Schedule under section 5332 of title 5, United States Code.

(c) DETAIL OF FEDERAL GOVERNMENT EMPLOYEES.—

(1) IN GENERAL.—On request of the Commission, the head of any Federal agency or department may detail any of the personnel of the agency or department to the Commission to assist the Commission in carrying out this Act.

(2) REIMBURSEMENT.—A detail of personnel under this subsection shall be without reimbursement by the Commission to the agency from which the employee was detailed.

(3) CIVIL SERVICE STATUS.—The detail of the employee shall be without interruption or loss of civil service status or privilege.

(d) OTHER REVENUES AND EXPENDITURES.—

(1) IN GENERAL.—The Commission may procure supplies, services, and property, enter into contracts, and expend funds appropriated, donated, or received to carry out contracts.

(2) DONATIONS.—

(A) IN GENERAL.—The Commission may solicit, accept, use, and dispose of donations of money, property, or personal services.

(B) LIMITATIONS.—Subject to subparagraph (C), the Commission shall not accept donations—

(i) the value of which exceeds $50,000 annually, in the case of donations from an individual; or

(ii) the value of which exceeds $250,000 annually, in the case of donations from a person other than an individual.

(C) NONPROFIT ORGANIZATION.—The limitations in subparagraph (B) shall not apply in the case of an organization that is—

(i) described in section 501(c)(3) of the Internal Revenue Code of 1986; and

(ii) exempt from taxation under section 501(a) of the Internal Revenue Code of 1986.

(3) ACQUIRED ITEMS.—Any book, manuscript, miscellaneous printed matter, memorabilia, relic, and other material or property relating to the time period of the discovery of Florida acquired by the Commission may be deposited for preservation in national, State, or local libraries, museums, archives, or other agencies with the consent of the depositary institution.

(e) POSTAL SERVICES.—The Commission may use the United States mail to carry out this Act in the same manner and under the same conditions as other agencies of the Federal Government.

(f) VOLUNTARY SERVICES.—Notwithstanding section 1342 of title 31, United States Code, the Commission may accept and use voluntary and uncompensated services as the Commission determines to be necessary.

SEC. 7. STUDY.

The Secretary of the Interior shall—

(1) in accordance with section 8(c) of Public Law 91–383 (16 U.S.C. 1a–5(c)), conduct a study to assess the suitability and feasibility of designating an area in the State of Florida as a unit of the National Park System to commemorate the discovery of Florida by Ponce de Leon; and

(2) not later than 3 years after the date on which funds are made available to carry out the study, submit to the Committee on Energy and Natural Resources of the Senate and the Committee on Resources of the House of Representatives a report that describes—

(A) the findings of the study; and

(B) any conclusions and recommendations of the Secretary of the Interior with respect to the study.

SEC. 8. AUTHORIZATION OF APPROPRIATIONS.

(a) IN GENERAL.—Subject to subsection (b), there is authorized to be appropriated to carry out the purposes of this Act $250,000 for each of fiscal years 2005 through 2013.

(b) AVAILABILITY OF FUNDS.—Amounts appropriated under this section for any fiscal year shall remain available until December 31, 2013.

SEC. 9. TERMINATION OF AUTHORITY.

The authority provided by this Act terminates effective December 31, 2013.

INFLUENZA VACCINE

Mr. FRIST. Mr. President, in a few minutes we will be closing down for the night. While we are waiting for some of the final paperwork to be provided, I wanted to take this opportunity to speak to an important issue that affects all children today but also our seniors—an issue that reflects to me a longstanding problem that we must address in this body yet we failed to address it adequately thus far, although we have attempted on several occasions. It has to do with the influenza vaccine.

As we all know, this week Chiron, the company that makes the influenza vaccine, actually one of two companies licensed to sell the vaccine in the United States, announced 48 million doses could not be sent to the United States because of contamination problems.

I thought I would take a few minutes and put that in perspective because people say, Why don't we have more manufacturers? What happened to the U.S. manufacturing base?

A couple of facts: Influenza is a type of virus that kills 36,000 Americans a year; about 100 people a day die from influenza, and about one-half million people die worldwide.

This week, the influenza vaccine supply coming into the United States was cut in half when the manufacturer Chiron announced it would not be able to produce those 48 million doses for the United States—seniors and Americans really of all ages—because some of it may have been contaminated.

As I mentioned, Chiron is only one of two companies licensed to sell the vaccine in the United States. As a result, as we all know, public service announcements and other announcements

of the Department of Health and Human Services asked healthy adults to forego getting flu shots this year. Up until that point in time, it encouraged everyone, in essence, to get flu shots.

We know it is quite benign, with very few side effects, and it has a real therapeutic impact.

This change in policy is required because of the fall-off in the number of doses that are available. Before this week's announcement, we had expected about 100 million doses ready for this year. Last year, it was 87 million doses. We were going to have 100 million doses this year. So it was appropriate planning but also only two companies are producing here. One company had its supply contaminated and we find ourselves in the current situation.

General background: We have had this discussion before. I am really going back and repeating something we have already done on the floor and debated on the floor about 8 months ago. So this is not new information, but it is worth people thinking about because it is a real call to action. There are now only five major vaccine manufacturers worldwide that have production facilities in the United States. This is for all vaccines. Only two, Merck and Wyeth, are U.S. companies.

The five large vaccine manufacturers are Aventis Pasteur, which produces here in the United States and over in France; Merck produces here in the United States; Chiron, which produces in Europe and in several places throughout Europe, Italy, Germany, United Kingdom; Wyeth/Lederle, which produces here in the United States; and GlaxoSmithKline with production in Belgium.

There are some other manufacturers of much smaller scale around the world, but it is hard to get a real good estimate of how many there are, especially with developing country manufacturers. But there are mainly five. That is for all vaccines.

If I focus just on the influenza vaccine, there are approximately a dozen manufacturers worldwide, if you put everybody together. Yet only two manufacturers of influenza vaccines are located in the United States, Aventis Pasteur and MedImmune. Aventis also has a French-based manufacturing plant, which I mentioned, but that vaccine is not licensed here in the United States.

Chiron became a major player in the influenza market when it combined really three other companies—bought three companies that were in the existing influenza manufacturing business in the United Kingdom and in Italy and Germany.

None of the influenza vaccines in Italy or Germany are licensed in the United States. The facility in Liverpool has a capacity of about 56 million doses a year, and almost all of that—90 percent—comes to the United States. The other player, MedImmune, is a new player and it has that live vaccine nasal spray called FluMist. It was introduced last year—quite revolutionary at the time. The company made slightly more than 4 million doses last year but it only sold about 800,000. So it made 4 million, only sold about 500,000 to 800,000, and now they will say they will only have about 1 to 2 million doses in the market. The CDC says it is about 1.1 million doses.

That is all really one needs to know about the manufacturing base. The whole point is, it is small and has gotten smaller and smaller over time.

Why is that? That is really what I want to speak to because that is what I believe this body must act upon or otherwise it is not going to change.

My point is, the manufacturing base has been weakened, devastated in this country in part because of lawsuits. It is the same old story—frivolous, unnecessary lawsuits, but these frivolous lawsuits are tolerated into many fields.

We talked about asbestos and medical liability on the floor. We talked about class action lawsuits. But once again, it is lawsuits that call out for tort reform because it drives companies from a manufacturing base—from a score down to really two in the flu vaccine.

Our Nation's commitment to immunization: Why are vaccines so important? Our Nation's commitment has been one of the most effective public health interventions in the history of medicine. Our country has been proactive, it has been aggressive, and it has been the world leader.

We have been able to reduce the incidence of a whole range of disease, whether it is measles, mumps, or polio. I spoke earlier on the floor today about the HIV/AIDS virus which killed 23 million people. We don't have a vaccine for it. That little virus, which knows no borders. It can't be smelled or felt. It just travels across the world. We need a vaccine to eradicate it.

We did have smallpox. We eradicated smallpox which killed between 300 million and 500 million people in the 20th century alone—that little smallpox virus.

However, because we had a vaccine, we killed it. We eradicated that virus, which had killed between 300 million and 500 million. That is the power of vaccines. They can and they do protect individuals. That is why we recommend them to not only individuals but entire populations.

Now the overall safety record and frivolous lawsuits. This is not Dr. FRIST trying to beat up on the trial lawyers. Frivolous lawsuits are a huge problem. If there are all of these lawsuits, people must think there is a huge safety problem; otherwise why sue everybody? The overall safety record of vaccines has been remarkable. That is why today, looking at the relative benefits and disadvantages, the balance is huge for the benefits, largely because the vaccines have not only worked but have been safe, again and again and again.

However, in spite of that safety, the escalating cost and the continuing threats of litigation, which drive the cost of those vaccines up and the manufacturers have to pay those huge premiums to be protected, have become major disincentives to the production and distribution of these products. It is obvious, if you are a manufacturer today in America or wherever in the world—it is just that our legal system is much more aggressive than any country in the world—if you were a manufacturer, why would you make a vaccine if you know you will be sued even if the product is safe? The answer is obvious.

Indeed, during the past two decades, the number of manufacturers who make vaccines for kids, for children, has dwindled from 12 down to 4. Only two of the four manufacturers that make vaccines for children are in the United States of America. I contend and the data and the evidence is that a large part of that is because of the devastating impact of these frivolous lawsuits. In fact, only two major manufacturers of vaccines for children and adults are based in the United States, coupled with the fact that there are only five major companies worldwide for all vaccines.

There are significant barriers to entry into this market. Again, I am addressing primarily the high cost of lawsuits. Why do I say that? If you look during the early and middle 1980s, litigation threatened to cripple our vaccine industry. Things got better for a while, but now, once again, there is a whole new wave of lawsuits that seek to circumvent a program that is called the Vaccine Injury Compensation Program, or VICP, a program that historically has been very successful, but the lawsuits go around the program, they circumvent the program, and with that you had the huge settlements, huge potential threats to our manufacturing base. The impact today is on our children's well-being and on the well-being of all Americans, especially if we have a huge influenza outbreak.

Why do I point my finger at the legal system, which is almost chaotic? We have the Vaccine Injury Compensation Program, which can work very well, but it needs to be reformed so you do not have the frivolous lawsuits going around it and going after the deep pockets. An example, and I will just give one although there is a whole list of examples—the overall worldwide vaccine market, every vaccine made everywhere in the world, is worth $6 billion. Yet just one class action lawsuit pending last year sought $30 billion in damages. That is one class action lawsuit seeking $30 billion. The overall market, every vaccine in the world, is only valued at $6 billion. Why would any manufacturer subject themselves to this potential liability? It is occurring right here in the United States. It is not occurring in other countries. So we have a weakened manufacturing base because they will not stay in the business due to the threat of lawsuits, leaving us in a situation of only two manufacturers.

No matter how big the demand, if we buy only from two people and there is a contamination problem, we are in trouble. In the announcement earlier this week, we saw what happened to Chiron and with that the consequences of what has happened there on Americans and on children abroad. That is our protection from life-threatening illnesses.

Again, 36,000 people die every year of this little virus which can be prevented, and the vaccine helps prevent it. We have the demand, we have the money, but we do not have the manufacturing base because of this chaotic lawsuit frenzy, the frivolous lawsuits.

We have seen shortages in childhood vaccines in recent years. We have experienced shortages in the influenza vaccine in recent years. After this week's announcement, we will clearly experience another shortage in the United States this year despite the tremendous planning and the unprecedented Federal efforts, including the wonderful work done by Dr. Julie Gerberding at the CDC and Secretary Tommy Thompson at HHS. We have to address the underlying causes. We have to address the root causes of the vaccine shortages in the near term. The long-term effects can even be more devastating if we do not.

That is why I bring it to the Senate's attention late on a Sunday evening. It is our responsibility. The Senate must act. No one else has been able to address that underlying problem that deals with our tort system, but we can. We should. If we are not able to stabilize the world's vaccine supply and make the market stable, give it a firm foundation, it will not be viable. This will affect not only our ability to manufacture vaccines that exist today, but what about that HIV/AIDS virus which has killed 23 million people, has 45 million people infected, and will likely kill another 60 million people—and maybe more than that unless we act. Figure out a vaccine. People are not going to have an incentive to research and invest in research and development in a vaccine if there will not be a market because of frivolous lawsuits which destroy anybody entering that manufacturing base.

I talked earlier today about Alzheimer's disease. Right now, could there be a vaccine for Alzheimer's disease? The answer is yes. Will we have appropriate research and development? Well, I don't know; it depends on whether people are given some incentive to enter that field. To do that, we have to have a strong manufacturing base.

We have to have companies willing to do the research and willing to take the risks to develop safer vaccines that, ultimately, we know will protect us, will save lives, not just for adults, but for kids, against these biological agents, against these viruses, whether it is HIV/AIDS, or smallpox, where we were successful, or influenza that is of current concern.

What have we done in the past? In the past, I have sponsored two pieces of legislation that go a long way toward moving us to stabilization of this market. One of those bills, the Improved Vaccine Affordability and Availability Act, which was S. 2053 in the 107th Congress and S. 754 in the 108th Congress, would restore balance to the litigation system for childhood vaccines by clarifying the congressional intent that all vaccine litigation regarding childhood vaccines should proceed through the Vaccine Injury Compensation Program.

The program that I mentioned that is set up has worked well in the past. We just need to fix the program so we will not have these frivolous lawsuits circumventing the program.

These bills would expand the remedies to help compensate those who are injured, those who suffer serious side effects from vaccines, while at the same time ensuring that unwarranted litigation does not further destabilize the supplies.

The legislation—again, this is legislation in the 107th Congress and the 108th Congress which, in effect, the lawyers have beat back and have not let us pass; but it is going to come forward again—would also require the Federal Government to maintain a stockpile of prioritized vaccines. This will help stabilize supplies and help us prepare for years ahead in which vaccine production may or may not be able to keep pace with the need.

These bills—again, it was S. 2053 in the last Congress and S. 754 in this Congress—would also expand the funding available for State and local efforts to boost immunization rates among children, especially those in underserved areas or those at a high risk to vaccine-preventable diseases.

Each of the major provisions included in the legislation was recommended by the Advisory Commission on Childhood Vaccines. That is a Federal expert panel composed of vaccine manufacturers, health care providers, and trial lawyers. The legislation also has been endorsed by a broad range of medical and children's health groups, including the American Academy of Pediatrics, Every Child By Two, and Parents of Kids with Infectious Diseases.

We must return to this legislation in the next Congress. And we will consider other steps to address the vaccine situation in the future.

Recently, over the course of the week—and really it plays off in the Presidential election again and in other discussions—people are trying to seize upon hot issues and turn them to their political advantage. Let me just say several things.

No. 1, it is irresponsible to say that there is a quick fix. It is complex. It takes study. We have done that study. We are ready to legislate. But there is no quick fix.

Again, there have been people—I believe it has been on the floor of the Senate, but I know it has been in the press—who are terribly misinformed. Yet when they say something, people accept it as fact. And a statement to suggest somehow that this is an issue that arises by brand drugs keeping generics off the market does not make sense. People can say that, and people nod their head, but it does not make sense.

Why do I say that? Because a flu vaccine has to be unique each year. The generic is standardization; you just produce a lot of it. The flu vaccine has to be tailored. It has to be modified. And it takes several years to do those modifications.

No. 2, I do want to applaud the Bush administration, the CDC, the Department of Health and Human Services, Dr. Julie Gerberding, who I mentioned, and Secretary Tommy Thompson. They had virtually as close to perfect as you can planning in terms of vaccines. They took immediate and prompt action as soon as this shortage became available.

A third point I want to close with is, we have to create a stable environment through a combination. This is where there is no quick fix. We need to address the future stockpile, perhaps with some guaranteed purchase by Government, public-private partnerships for research and development, increased funding for safer vaccines, and perhaps—I would argue most importantly—legal reforms. The flu vaccine shortage we are seeing right now is a symptom of the broader issues of risk and low return of developing any vaccines.

Lastly, healthy adults and kids not in the CDC-recommended categories should withhold this year so that we will have sufficient vaccines available for those who are at higher risk.

Mr. President, again, I bring this to the floor because it is a current topic. I do not want to see it politicized. We have an obligation in this body to address it head-on. It is a tort reform issue. It is the sort of issue that we are obligated to take on, and we will take on very directly in the next Congress.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

UNANIMOUS CONSENT AGREEMENT—SENSE OF THE SENATE RESOLUTION

Mr. FRIST. Mr. President, I ask unanimous consent that the previous order be modified so that on Monday, Senator BOXER be recognized for up to 30 minutes, and that at that time the sense-of-the-Senate resolution submitted by Senator BOXER, which is currently at the desk, be considered and

adopted, with the motion to reconsider laid upon the table.

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

EXECUTIVE SESSION

EXECUTIVE CALENDAR

Mr. FRIST. Mr. President, I ask unanimous consent that the Senate immediately proceed to executive session to consider the following nomination on today's Executive Calendar: Calendar No. 916. I further ask unanimous consent that the nomination be confirmed, the motion to reconsider be laid upon the table, and the President be immediately notified of the Senate's action.

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

The nomination considered and confirmed is as follows:

DEPARTMENT OF DEFENSE

Richard Greco, Jr., of New York, to be an Assistant Secretary of the Navy.

SECOND PROTOCOL AMENDING THE CONVENTION BETWEEN THE UNITED STATES OF AMERICA AND BARBADOS FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME

Mr. FRIST. Mr. President, in executive session, I ask unanimous consent that the Foreign Relations Committee be discharged from further consideration of treaty document 108–26, relating to the convention between the United States and Barbados.

I further ask unanimous consent that the Senate proceed to its consideration and to the accompanying resolution of ratification, which is at the desk; I further ask unanimous consent that the treaty be considered as having passed through its various parliamentary stages up to and including the presentation of the resolution of ratification; that any statements be printed in the RECORD; and that the Senate immediately proceed to a vote on the resolution of ratification; further, that when the resolution of ratification is voted upon, the motion to reconsider be laid upon the table, the President be notified of the Senate's action, and that following the disposition of the treaty, the Senate return to legislative session.

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

Mr. FRIST. Mr. President, I ask for a division vote on the resolution of ratification.

The PRESIDING OFFICER. A division is requested.

Senators in favor of the resolution of ratification will stand and be counted.

Those opposed will stand and be counted.

On a division, two-thirds of the Senators present and voting having voted in the affirmative, the resolution of ratification is agreed to.

The Resolution of Ratification is as follows:

Resolved (two-thirds of the Senators present concurring therein), That the Senate advise and consent to the ratification of the Second Protocol Amending the Convention Between the United States of America and Barbados for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income, Signed on December 31, 1984, signed at Washington on July 14, 2004 (T. Doc. 108–26).

The PRESIDING OFFICER. The President will be immediately notified.

LEGISLATIVE SESSION

The PRESIDING OFFICER. The Senate will now return to legislative session.

MEASURES DISCHARGED

Mr. FRIST. Mr. President, I ask unanimous consent that the Governmental Affairs Committee be discharged from further consideration of S. 2693, S. 2839, H.R. 5039, H.R. 4381, H.R. 4556, H.R. 4618, and H.R. 4632 en bloc, and that the Senate proceed to their immediate consideration, along with H.R. 4046, H.R. 5027, H.R. 5133, H.R. 5147, and H.R. 5051, which are at the desk, en bloc.

Mr. REID. Mr. President, parliamentary inquiry.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. When does the name of the committee change officially? The name of the committee now is Governmental Affairs. We changed the name yesterday, did we not? Will it change in the new Congress? I wanted to know.

Thank you.

The PRESIDING OFFICER. It is the understanding of the Chair the change occurs in the next Congress.

Mr. REID. Thank you very much.

The PRESIDING OFFICER. Is there objection to the pending request?

Mr. REID. No objection.

Mr. TALENT. Mr. President, I am certainly not going to object, but will the majority leader yield for a minute?

Mr. FRIST. I would be happy to.

Mr. TALENT. I had intended to make a few remarks as in morning business when I thought we would be staying in session for several more days. I figured I had a lot of time to do it. I am certainly glad that the leaders have been able to work out an arrangement to the contrary. But I wonder if your wrap-up request could include allowing me to speak as in morning business, if the Senator from Nevada does not mind, for maybe 20 minutes. It will not take any longer than that.

Mr. REID. You could do it tomorrow, too.

Mr. TALENT. I do not think there will be much time before the vote tomorrow.

Mr. REID. That is right.

Mr. TALENT. Afterwards we are all going to be trying to catch planes, so I ask if I could have a few minutes.

Mr. FRIST. We will make that part of our unanimous consent request. And you might consider making it 10 minutes instead of 20 minutes, but you will have up to 20 minutes.

Mr. TALENT. I appreciate it.

The PRESIDING OFFICER. Is there objection to proceeding to the measures?

Without objection, it is so ordered.

There being no objection, the Senate proceeded to consider the bills en bloc.

Mr. FRIST. Mr. President, I ask unanimous consent that the bills be read a third time and passed, the motions to reconsider be laid upon the table en bloc, and that any statements relating to the bills be printed in the RECORD.

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

LIEUTENANT JOHN F. FINN POST OFFICE

The bill (S. 2693) to designate the facility of the United States Postal Service located at 1475 Western Avenue, Suite 45, in Albany, New York, as the ''Lieutenant John F. Finn Post Office,'' was considered, read the third time, and passed, as follows:

S. 2693

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

SECTION 1. LIEUTENANT JOHN F. FINN POST OFFICE.

(a) DESIGNATION.—The facility of the United States Postal Service located at 1475 Western Avenue, Suite 45, in Albany, New York, shall be known and designated as the ''Lieutenant John F. Finn Post Office''.

(b) REFERENCES.—Any reference in a law, map, regulation, document, paper, or other record of the United States to the facility referred to in subsection (a) shall be deemed to be a reference to the Lieutenant John F. Finn Post Office.

SERGEANT RIAYAN A. TEJEDA POST OFFICE

The bill (S. 2839) to designate the facility of the United States Postal Service located at 555 West 180th Street in New York, New York, as the ''Sergeant Riayan A. Tejeda Post Office'' was considered, read the third time, and passed, as follows:

S. 2839

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

SECTION 1. SERGEANT RIAYAN A. TEJEDA POST OFFICE.

(a) DESIGNATION.—The facility of the United States Postal Service located at 555 West 180th Street in New York, New York, shall be known and designated as the ''Sergeant Riayan A. Tejeda Post Office''.

(b) REFERENCES.—Any reference in a law, map, regulation, document, paper, or other record of the United States to the facility referred to in subsection (a) shall be deemed to be a reference to the Sergeant Riayan A. Tejeda Post Office.

EVA HOLTZMAN POST OFFICE

The bill (H.R. 5039) to designate the facility of the United States Postal

Service located at United States Route 1 in Ridgeway, North Carolina, as the ''Eva Holtzman Post Office'' was considered, read the third time, and passed.

HARVEY AND BERNICE JONES POST OFFICE BUILDING

The bill (H.R. 4381) to designate the facility of the United States Postal Service located at 2811 Springdale Avenue in Springdale, Arkansas, as the ''Harvey and Bernice Jones Post Office Building'' was considered, read the third time, and passed.

GENERAL WILLIAM CAREY LEE POST OFFICE BUILDING

The bill (H.R. 4556) to designate the facility of the United States Postal Service located at 1115 South Clinton Avenue in Dunn, North Carolina, as the ''General William Carey Lee Post Office Building'' was considered, read the third time, and passed.

ANTHONY I. LOMBARDI MEMORIAL POST OFFICE BUILDING

The bill (H.R. 4618) to designate the facility of the United States Postal Service located at 10 West Prospect Street in Nanuet, New York, as the ''Anthony I. Lombardi Memorial Post Office Building'' was considered, read the third time, and passed.

ARCHIE SPIGNER POST OFFICE BUILDING

The bill (H.R. 4632) to designate the facility of the United States Postal Service located at 19504 Linden Boulevard in St. Albans, New York, as the ''Archie Spigner Post Office Building'' was considered, read the third time, and passed.

SERGEANT RIAYAN A. TEJEDA POST OFFICE

The bill (H.R. 4046) to designate the facility of the United States Postal Service located at 555 West 180th Street in New York, New York, as the ''Sergeant Riayan A. Tejeda Post Office'' was considered, read the third time, and passed.

SPECIALIST ERIC RAMIREZ POST OFFICE

The bill (H.R. 5027) to designate the facility of the United States Postal Service located at 411 Midway Avenue in Mascotte, Florida, as the ''Specialist Eric Ramirez Post Office'' was considered, read the third time, and passed.

MARTHA PENNINO POST OFFICE BUILDING

The bill (H.R. 5133) to designate the facility of the United States Postal Service located at 11110 Sunset Hills Road in Reston, Virginia, as the ''Martha Pennino Post Office Building'' was considered, read the third time, and passed.

EVAN ASA ASHCRAFT POST OFFICE BUILDING

The bill (H.R. 5147) to designate the facility of the United States Postal Service located at 23055 Sherman Way in West Hills, California, as the ''Evan Asa Ashcraft Post Office Building'' was considered, read the third time, and passed.

LEONARD C. BURCH POST OFFICE BUILDING

The bill (H.R. 5051) to designate the facility of the United States Postal Service located at 1001 Williams Street in Ignacio, Colorado, as the ''Leonard C. Burch Post Office Building'' was considered, read the third time, and passed.

GLOBAL ANTI-SEMITISM REVIEW ACT OF 2004

Mr. FRIST. Mr. President, I ask unanimous consent that the Chair now lay before the Senate the House message to accompany S. 2292.

There being no objection, the Presiding Officer laid before the Senate the following message from the House of Representatives:

S. 2292

Resolved, That the bill from the Senate (S. 2292) entitled ''An Act to require a report oil acts of anti-Semitism around the world'', do pass with the following amendments:

(1)Page 2, line 7, after ''During'' insert the following: the last 3 months of 2003 and

(2)Page 2, after line 9, insert the following new subparagraphs:

(A) In Putrajaya, Malaysia, on October 16, 2003, former Prime Minister Mahatir Mohammad told the 57 national leaders assembled for the Organization of the Islamic Conference that the Jews ''rule the world by proxy'', and called for a ''final victory'' by the world's 1.3 billion Muslim, who, he said, ''cannot be defeated by a few million Jews.''.

(B) In Istanbul, Turkey, on November 15, 2003, simultaneous car bombs exploded outside two synagogues filled with worshippers, killing 24 people. and wounding more than 250 people.

(3)Page 2, line 10, redesignate subparagraph (A) as subparagraph (C).

(4)Page 2, line 14, redesignate subparagraph (B) as subparagraph (D).

(5)Page 2, lisle 19, redesignate subparagraph (C) as subparagraph (E).

(6)Page 3, line 1, redesignate subparagraph (D) as subparagraph (F).

(7)Page 3, beginning line 9, paragraph (4) is amended to read as follows:

(4)In November 2002, state-run television in Egypt broadcast the anti-Semitic series entitled ''Horseman Without a Horse'' , which is based upon the fictions conspiracy theory known as the Protocols of the Elders of Zion. The Protocols have been used throughout the last century by despots such as Adolf Hitler to justify violence against Jews.

(8)Page 4, beginning line 3, paragraph (7) is amended to read as follows:

(7) The OSCE convened a conference again on April 28–29, 2004, in Berlin, to address the problem of anti-Semitism with the United States delegation led by former Mayor of New York City, Ed Koch.

(9)Page 4, after line 20, insert the following new paragraph:

(10) Anti-Semitism has at times taken the form of vilification of Zionism, the Jewish national movement, and incitement against Israel.

(10)Page 5, line 2, insert after ''OSCE'' the following: , the European Union, and the United Nations

(11)Page 5, line 7, strike ''(a) ONE-TIME REPORT.—''.

(12)Page 5, line 11, insert ''one-time'' before ''report''.

(13)Page 5, line 22, strike ''and'' at the end.

(14)Page 5, line 24, strike the period at the end and insert: ; and

(15)Page 5, after line 24, insert the following new paragraph:

(5) instances of propaganda, in government and nongovernment media that attempt to justify or promote racial hatred or incite acts of violence against Jewish people.

(16)Page 6, beginning line 1, strike subsection (b) and insert the following new sections:

SEC. 5. AUTHORIZATION FOR ESTABLISHMENT OF OFFICE TO MONITOR AND COMBAT ANTI-SEMITISM.

The State Department Basic Authorities Act of 1956 is amended by adding after section 58 (22 U.S.C. 2730) the following new section:

''SEC. 59. MONITORING AND COMBATING ANTI-SEMITISM.

''(a) OFFICE TO MONITOR AND COMBAT ANTI-SEMITISM.—

''(1) ESTABLISHMENT OF OFFICE.—The Secretary shall establish within the Department of State an Office to Monitor and Combat anti-Semitism (in this section referred to as the 'Office') .

''(2) HEAD OF OFFICE.—

''(A) SPECIAL ENVOY FOR MONITORING AND COMBATING ANTI-SEMITISM.—The head of the Office shall be the Special Envoy for Monitoring and Combating anti-Semitism (in this section referred to as the 'Special Envoy').

''(B) APPOINTMENT OF HEAD OF OFFICE.—The Secretary shall appoint the Special Envoy. If the Secretary determines that such is appropriate, the Secretary may appoint the Special Envoy from among officers and employees of the Department. The Secretary may allow such officer or employee to retain the position (and the responsibilities associated with such position) held by such officer or employee prior to the appointment of such officer or employee to the position of Special Envoy under this paragraph.

''(b) PURPOSE OF OFFICE.—Upon establishment, the Office shall assume the primary responsibility for—

''(1) monitoring and combating acts of anti-Semitism and anti-Semitic incitement that occur in foreign countries;

''(2) coordinating and assisting in the preparation of that portion of the report required by sections 116(d)(7) and 502B(b) of the Foreign Assistance Act of 1961 (22 U.S.C. 2151n(d)(7) and 2304(b)) relating to an assessment and description of the nature and extent of acts of anti-Semitism and anti-Semitic incitement for inclusion in the annual Country Reports on Human Rights Practices; and

''(3) coordinating and assisting in the preparation of that portion of the report required by section 102(b)(1)(A)(iv) of the International, Religious Freedom Act of 1998 (22 U.S.C. 6412(b)(1) A)(iv)) relating to an assessment and description of the nature and extent of acts of anti-Semitism and anti-Semitic incitement for inclusion in the Annual Report on International Religious Freedom.

''(c) CONSULTATIONS.—Special Envoy shall, consult with domestic and international nongovernmental organizations and multilateral organizations and institutions, as the Special Envoy considers appropriate to fulfill the purposes of this section.''.

SEC. 6. INCLUSION IN DEPARTMENT OF STATE ANNUAL REPORTS OF INFORMATION CONCERNING ACTS OF ANTI-SEMITISM IN FOREIGN COUNTRIES.

(a) INCLUSION IN COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES.—The Foreign Assistance Act of 1961 (22 U.S.C. 2151 et seq.) is amended—

(1) in section 116(d) (22 U.S.C. 2151n(d))—

(A) by redesignating paragraphs (8), (9), and (10), as paragraphs (9), (10), and (11), respectively; and

(B) by inserting after paragraph (7) the following new paragraph:

''(8) wherever applicable, a description of the nature and extent of acts of anti-Semitism and anti-Semitic incitement that occur during the preceding year, including descriptions of—

''(A) acts of physical violence against, or harassment of Jewish people, and acts of violence against, or vandalism of Jewish community institutions, including schools, synagogues, and cemeteries;

''(B) instances of propaganda in government and nongovernment media that attempt to justify or promote racial hatred or incite acts of violence against Jewish people;

''(C) the actions, if any, taken by the government of the country to respond to such violence and attacks or to eliminate such propaganda or incitement;

''(D) the actions taken by such government to enact and enforce laws relating to the protection of the right to religions freedom of Jewish people; and

'(E) the efforts of such government to promote anti-bias and tolerance education;''; and (2) after the fourth sentence of section 502B(b) (22 U.S.C. 2304(b)), by inserting the following new sentence: ''Wherever applicable, a description of the nature and extent of acts of anti-Semitism and anti-Semitic incitement that occur, including the descriptions of such acts required under section 116(d)(8).''.

(b) INCLUSION IN ANNUAL REPORT ON INTERNATIONAL RELIGIOUS FREEDOM.—Section 102(b)(1)(A) of the International Religious Freedom Act of 1998 (22 U.S.C. 6412(b)(1)(A)) is amended—

(1) in clause (ii), by striking ''and'' at the end;

(2) in clause (iii), by striking the period at the end and inserting ''; and''; and

(3) by adding after clause (iii) the following new clause:

''(iv) wherever applicable, an assessment and description of the nature and extent of acts of anti-Semitism and anti-Semitic incitement that occur in that country during the preceding year, including—

''(I) acts of physical violence against, or harassment of, Jewish people, acts of violence against, or vandalism of, Jewish community institutions, and instances of propaganda in government and nongovernment media that incite such acts; and

''(II) the actions taken by the government of that country to respond to such violence and attacks or to eliminate such propaganda or incitement, to enact and enforce laws relating to the protection of the right to religious freedom of Jewish people, and to promote anti-bias and tolerance education.''.

(c) EFFECTIVE DATE OF INCLUSIONS.—The amendments made by subsections (a) and (b) shall apply beginning with the first report under sections 116(d) and 502B(b) of the Foreign Assistance Act of 1961 (22 U.S.C. 2151n(d) and 2304(b)) and section 102(b) of the International Religious Freedom Act of 1998 (22 U.S.C. 6312(b)) submitted more than 180 days after the date of the enactment of this Act.

Mr. FRIST. I ask unanimous consent that the Senate concur in the House amendments, the motion to reconsider be laid upon the table, and any statements relating to the bill be printed in the RECORD.

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

THE CALENDAR

Mr. FRIST. I ask unanimous consent that the Senate proceed to the immediate consideration of the following Calendar numbers en bloc: 719, 721 through 723, 725 through 727, 729, 731 through 738, and 745.

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

Mr. FRIST. I ask unanimous consent that the amendments at the desk be agreed to en bloc, that all committee amendments, as amended, if amended and where applicable, be agreed to, the bills, as amended, if amended, be read a third time and passed, the title amendments, where applicable, be agreed to, the motions to reconsider be laid upon the table en bloc, and that any statements relating to the bills be printed in the RECORD.

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

ARIZONA WATER SETTLEMENTS ACT

The Senate proceeded to consider the bill (S. 437) to provide for adjustments to the Central Arizona Project in Arizona, to authorize the Gila River Indian Community water rights settlement, to reauthorize and amend the Southern Arizona Water Rights Settlement Act of 1982, and for other purposes, which had been reported from the Committee on Energy and Natural Resources, with an amendment to strike all after the enacting clause and insert in lieu thereof the following:

(Stike the part shown in black brackets and insert the part shown in italic.)

S. 437

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 ''Arizona Water Settlements Act''.

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

[SEC. 2. DEFINITIONS.

[In titles I and II:

[(1) ACRE-FEET.—The term ''acre-feet'' means acre-feet per year.

[(2) AFTER-ACQUIRED TRUST LAND.—The term ''after-acquired trust land'' means land that—

[(A) is located—

[(i) within the State; but

[(ii) outside the exterior boundaries of the Reservation; and

[(B) is taken into trust by the United States for the benefit of the Community after the enforceability date.

[(3) AGRICULTURAL PRIORITY WATER.—The term ''agricultural priority water'' means Central Arizona Project non-Indian agricultural priority water, as defined in the Gila River agreement.

[(4) ALLOTTEE.—The term ''allottee'' means a person that holds a beneficial real property interest in an Indian allotment that is—

[(A) located within the Reservation; and

[(B) held in trust by the United States.

[(5) ARIZONA INDIAN TRIBE.—The term ''Arizona Indian tribe'' means an Indian tribe (as defined in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b)) that is located in the State.

[(6) ASARCO.—The term ''Asarco'' means Asarco Incorporated, a New Jersey corporation of that name, and its subsidiaries operating mining operations in the State.

[(7) CAP CONTRACTOR.—The term ''CAP contractor'' means a person or entity that has entered into a long-term contract (as that term is used in the repayment stipulation) with the United States for delivery of water through the CAP system.

[(8) CAP OPERATING AGENCY.—The term ''CAP operating agency'' means the entity or entities authorized to assume responsibility for the care, operation, maintenance, and replacement of the CAP system.

[(9) CAP REPAYMENT CONTRACT.—

[(A) IN GENERAL.—The term ''CAP repayment contract'' means the contract dated December 1, 1988 (Contract No. 14–06–W–245, Amendment No. 1) between the United States and the Central Arizona Water Conservation District for the delivery of water

and the repayment of costs of the Central Arizona Project.

[(B) INCLUSIONS.—The term ''CAP repayment contract'' includes all amendments to and revisions of that contract.

[(10) CAP SUBCONTRACTOR.—The term ''CAP subcontractor'' means a person or entity that has entered into a long-term subcontract (as that term is used in the repayment stipulation) with the United States and the Central Arizona Water Conservation District for the delivery of water through the CAP system.

[(11) CAP SYSTEM.—The term ''CAP system'' means—

[(A) the Mark Wilmer Pumping Plant;

[(B) the Hayden-Rhodes Aqueduct;

[(C) the Fannin-McFarland Aqueduct;

[(D) the Tucson Aqueduct;

[(E) the pumping plants and appurtenant works of the Central Arizona Project aqueduct system that are associated with the features described in subparagraphs (A) through (D); and

[(F) any extensions of, additions to, or replacements for the features described in subparagraphs (A) through (E).

[(12) CENTRAL ARIZONA PROJECT.—The term ''Central Arizona Project'' means the reclamation project authorized and constructed by the United States in accordance with title III of the Colorado River Basin Project Act (43 U.S.C. 1521 et seq.).

[(13) CENTRAL ARIZONA WATER CONSERVATION DISTRICT.—The term ''Central Arizona Water Conservation District'' means the political subdivision of the State that is the contractor under the CAP repayment contract.

[(14) CITIES.—The term ''Cities'' means the cities of Chandler, Glendale, Goodyear, Mesa, Peoria, Phoenix, and Scottsdale, Arizona.

[(15) COMMUNITY.—The term ''Community'' means the Gila River Indian Community, a government composed of members of the Pima Tribe and the Maricopa Tribe and organized under section 16 of the Act of June 18, 1934 (25 U.S.C. 476).

[(16) COMMUNITY CAP WATER.—The term ''Community CAP water'' means water to which the Community is entitled under the water delivery contract.

[(17) COMMUNITY REPAYMENT CONTRACT.—

[(A) IN GENERAL.—The term ''Community repayment contract'' means Contract No. 6–07–03–W0345 between the United States and the Community dated May 4, 1998, providing for the construction of water delivery facilities on the Reservation.

[(B) INCLUSIONS.—The term ''Community repayment contract'' includes any amendments to the contract described in subparagraph (A).

[(18) COMMUNITY WATER DELIVERY CONTRACT.—

[(A) IN GENERAL.—The term ''Community water delivery contract'' means Contract No. 3–07–30–W0284 between the Community and the United States dated October 22, 1992.

[(B) INCLUSIONS.—The term ''Community water delivery contract'' includes any amendments to the contract described in subparagraph (A).

[(19) CRR PROJECT WORKS.—

[(A) IN GENERAL.—The term ''CRR Project works'' means the portions of the San Carlos Irrigation Project located on the Reservation.

[(B) INCLUSION.—The term ''CRR Project works'' includes the portion of the San Carlos Irrigation Project known as the ''Southside Canal'', from the point at which the Southside Canal connects with the Pima Canal to the boundary of the Reservation.

[(20) DIRECTOR.—The term ''Director'' means—

[(A) the Director of the Arizona Department of Water Resources; or

[(B) with respect to an action to be carried out under this title, a State official or agency designated by the Governor or the State legislature.

[(21) ENFORCEABILITY DATE.—The term ''enforceability date'' means the date on which the Secretary publishes in the Federal Register the statement of findings described in section 207(d).

[(22) FEE LAND.—The term ''fee land'' means land, other than off-Reservation trust land, owned by the Community outside the exterior boundaries of the Reservation as of December 31, 2002.

[(23) FIXED OM&R CHARGE.—The term ''fixed OM&R charge'' has the meaning given the term in the repayment stipulation.

[(24) GILA RIVER ADJUDICATION PROCEEDINGS.—The term ''Gila River adjudication proceedings'' means the action pending in the Superior Court of the State of Arizona in and for the County of Maricopa styled ''In Re the General Adjudication of All Rights To Use Water In The Gila River System and Source'' W–1 (Salt), W–2 (Verde), W–3 (Upper Gila), W–4 (San Pedro) (Consolidated).

[(25) GILA RIVER AGREEMENT.—

[(A) IN GENERAL.—The term ''Gila River agreement'' means the agreement entitled the ''Gila River Indian Community Water Rights Settlement Agreement'', dated July 1, 2002.

[(B) INCLUSIONS.—The term ''Gila River agreement'' includes—

[(i) all exhibits to that agreement; and

[(ii) any amendment to that agreement or to an exhibit to that agreement made or added pursuant to that agreement.

[(26) GLOBE EQUITY DECREE.—

[(A) IN GENERAL.—The term ''Globe Equity Decree'' means the decree dated June 29, 1935, entered in United States of America v. Gila Valley Irrigation District, Globe Equity No. 59, et al., by the United States District Court for the District of Arizona.

[(B) INCLUSIONS.—The term ''Globe Equity Decree'' includes all court orders and decisions supplemental to that decree.

[(27) HAGGARD DECREE.—

[(A) IN GENERAL.—The term ''Haggard Decree'' means the decree dated June 11, 1903, entered in United States of America, as guardian of Chief Charley Juan Saul and Cyrus Sam, Maricopa Indians and 400 other Maricopa Indians similarly situated v. Haggard, et al., Cause No. 19, in the District Court for the Third Judicial District of the Territory of Arizona, in and for the County of Maricopa.

[(B) INCLUSIONS.—The term ''Haggard Decree'' includes all court orders and decisions supplemental to that decree.

[(28) INCLUDING.—The term ''including'' has the same meaning as the term ''including, but not limited to''.

[(29) INJURY TO WATER QUALITY.—The term ''injury to water quality'' means any contamination, diminution, or deprivation of water quality under Federal, State, or other law.

[(30) INJURY TO WATER RIGHTS.—

[(A) IN GENERAL.—The term ''injury to water rights'' means an interference with, diminution of, or deprivation of water rights under Federal, State, or other law.

[(B) INCLUSION.—The term ''injury to water rights'' includes a change in the underground water table and any effect of such a change.

[(C) EXCLUSION.— The term ''injury to water rights'' does not include subsidence damage or injury to water quality.

[(31) LOWER COLORADO RIVER BASIN DEVELOPMENT FUND.—The term ''Lower Colorado River Basin Development Fund'' means the fund established by section 403 of the Colorado River Basin Project Act (43 U.S.C. 1543).

[(32) MASTER AGREEMENT.—The term ''master agreement'' means the agreement entitled ''Arizona Water Settlement Agreement'' entered into by the Director, the Central Arizona Water Conservation District, and the Secretary, dated July 1, 2002.

[(33) OFF-RESERVATION TRUST LAND.—The term ''off-Reservation trust land'' means land outside the exterior boundaries of the Reservation that is held in trust by the United States for the benefit of the Community and the Community members as of the enforceability date.

[(34) PHELPS DODGE.—The term ''Phelps Dodge'' means the Phelps Dodge Corporation, a New York corporation of that name, and its subsidiaries, successors, or assigns.

[(35) REPAYMENT STIPULATION.—

[(A) IN GENERAL.—The term ''repayment stipulation'' means the Stipulation Regarding a Stay of Litigation, Resolution of Issues During the Stay, and for Ultimate Judgment Upon the Satisfaction of Conditions, filed with the United States District Court for the District of Arizona on May 3, 2000, in Central Arizona Water Conservation District v. United States, et al., No. CIV 95–625–TUC–WDB(EHC), No. CIV 95–1720–PHX–EHC (Consolidated Action).

[(B) INCLUSIONS.—The term ''repayment stipulation'' includes any amendment to or revision of the stipulation described in subparagraph (A).

[(36) RESERVATION.—

[(A) IN GENERAL.—The term ''Reservation'' means the land located within the exterior boundaries of the reservation created under sections 3 and 4 of the Act of February 28, 1859 (11 Stat. 401, chapter LXVI) and Executive Orders of August 31, 1876, June 14, 1879, May 5, 1882, November 15, 1883, July 31, 1911, June 2, 1913, August 27, 1914, and July 19, 1915.

[(B) EXCLUSION.—The term ''Reservation'' does not include the land located in sections 16 and 36, Township 4 South, Range 4 East, Salt and Gila River Base and Meridian.

[(37) ROOSEVELT HABITAT CONSERVATION PLAN.—The term ''Roosevelt Habitat Conservation Plan'' means the habitat conservation plan approved by the United States Fish and Wildlife Service under section 10(a)(1)(B) of the Endangered Species Act of 1973 (16 U.S.C. 1539(a)(1)(B)) for the incidental taking of endangered, threatened, and candidate species resulting from the continued operation by the Salt River Project of Roosevelt Dam and Lake, near Phoenix, Arizona.

[(38) ROOSEVELT WATER CONSERVATION DISTRICT.—The term ''Roosevelt Water Conservation District'' means the entity of that name that is a political subdivision of the State and an irrigation district organized under the law of the State.

[(39) SAFFORD.—The term ''Safford'' means the city of Safford, Arizona.

[(40) SALT RIVER PROJECT.—The term ''Salt River Project'' means the Salt River Project Agricultural Improvement and Power District, a political subdivision of the State, and the Salt River Valley Water Users' Association, an Arizona Territorial corporation.

[(41) SAN CARLOS APACHE TRIBE.—The term ''San Carlos Apache Tribe'' means the San Carlos Apache Tribe, a tribe of Apache Indians organized under [Section 16 of the Indian Reorganization Act of June 18, 1934, 48 Stat. 987 (25 U.S.C. 476).

[(42) SAN CARLOS IRRIGATION AND DRAINAGE DISTRICT.—The term ''San Carlos Irrigation and Drainage District'' means the entity of that name that is a political subdivision of the State and an irrigation and drainage district organized under the laws of the State.

[(43) SAN CARLOS IRRIGATION PROJECT.—

[(A) IN GENERAL.—The term ''San Carlos Irrigation Project'' means the San Carlos irrigation project authorized under the Act of June 7, 1924 (43 Stat. 475).

[(B) INCLUSIONS.—The term ''San Carlos Irrigation Project'' includes any amendments and supplements to the Act described in subparagraph (A).

[(44) SECRETARY.—The term ''Secretary'' means the Secretary of the Interior.

[(45) SPECIAL HOT LANDS.—The term ''special hot lands'' has the meaning given the term in subparagraph 2.34 of the UVD agreement.

[(46) STATE.—The term ''State'' means the State of Arizona.

[(47) SUBCONTRACT.—

[(A) IN GENERAL.—The term ''subcontract'' means a Central Arizona Project water delivery subcontract.

[(B) INCLUSION.—The term ''subcontract'' includes an amendment to a subcontract.

[(48) SUBSIDENCE DAMAGE.—The term ''subsidence damage'' means injury to land, water, or other real property resulting from the settling of geologic strata or cracking in the surface of the Earth of any length or depth, which settling or cracking is caused by the pumping of underground water.

[(49) TBI ELIGIBLE ACRES.—The term ''TBI eligible acres'' has the meaning given the term in subparagraph 2.37 of the UVD agreement.

[(50) UNCONTRACTED MUNICIPAL AND INDUSTRIAL WATER.—The term ''uncontracted municipal and industrial water'' means Central Arizona Project municipal and industrial priority water that is not subject to subcontract on the date of enactment of this Act.

[(51) UV DECREED ACRES.—

[(A) IN GENERAL.—The term ''UV decreed acres'' means the land located upstream and to the east of the Coolidge Dam for which water may be diverted pursuant to the Globe Equity Decree.

[(B) EXCLUSION.—The term ''UV decreed acres'' does not include the reservation of the San Carlos Apache Tribe.

[(52) UV DECREED WATER RIGHTS.—The term ''UV decreed water rights'' means the right to divert water for use on UV decreed acres in accordance with the Globe Equity Decree.

[(53) UV SUBJUGATED LAND.—The term ''UV subjugated land'' has the meaning given the term in subparagraph 2.50 of the UVD agreement.

[(54) UVD AGREEMENT.—The term ''UVD agreement'' means the agreement among the Community, the United States, the San Carlos Irrigation and Drainage District, the Franklin Irrigation District, the Gila Valley Irrigation District, and other parties located in the upper valley of the Gila River, dated July 1, 2002.

[(55) UVD SETTLING PARTIES.—The term ''UVD settling parties'' means the parties to the UVD agreement other than the United States, the San Carlos Irrigation and Drainage District, and the Community.

[(56) WATER OM&R FUND.—The term ''Water OM&R Fund'' means the Gila River Indian Community Water OM&R Trust Fund established by section 208.

[(57) WATER RIGHT.—The term ''water right'' means any right in or to groundwater, surface water, or effluent under Federal, State, or other law.

[(58) WATER RIGHTS APPURTENANT TO NM 381 ACRES.—The term ''water rights appurtenant to NM 381 acres'' means the water rights—

[(A) appurtenant to the 380.81 acres described in the decree in Arizona v. California, 376 U.S. 340, 349 (1964); and

[(B) appurtenant to other land, or for other uses, for which the water rights described in subparagraph (A) may be modified or used in accordance with that decree.

[(59) WATER RIGHTS FOR NM DOMESTIC PURPOSES.—The term ''water rights for NM domestic purposes'' means the water rights for domestic purposes of not more than 265 acre-feet of water for consumptive use described in paragraph IV(D)(2) of the decree in Arizona v. California, 376 U.S. 340, 350 (1964).

[(60) 1994 BIOLOGICAL OPINION.—The term ''1994 biological opinion'' means the biological opinion, numbered 2–21–90–F–119, and dated April 15, 1994, relating to the transportation and delivery of Central Arizona Project water to the Gila River basin.

[(61) 1996 BIOLOGICAL OPINION.—The term ''1996 biological opinion'' means the biological opinion, numbered 2–21–95–F–462 and dated July 23, 1996, relating to the impacts of modifying Roosevelt Dam on the southwestern willow flycatcher.

[(62) 1999 BIOLOGICAL OPINION.—The term ''1999 biological opinion'' means the draft biological opinion numbered 2–21–91–F–706, and dated May 1999, relating to the impacts of the Central Arizona Project on Gila Topminnow in the Santa Cruz River basin through the introduction and spread of nonnative aquatic species.

[TITLE I—CENTRAL ARIZONA PROJECT SETTLEMENT

[SEC. 101. SHORT TITLE.

[This title may be cited as the ''Central Arizona Project Settlement Act of 2003''.

[SEC. 102. FINDINGS.

[Congress finds that—

[(1) the water provided by the Central Arizona Project to Maricopa, Pinal, and Pima Counties in the State of Arizona, is vital to citizens of the State; and

[(2) an agreement on the allocation of Central Arizona Project water among interested persons, including Federal and State interests, would provide important benefits to the Federal Government, the State of Arizona, and the citizens of the State.

[SEC. 103. GENERAL PERMISSIBLE USES OF THE CENTRAL ARIZONA PROJECT.

[In accordance with the CAP repayment contract, the Central Arizona Project may be used to transport nonproject water for—

[(1) domestic, municipal, fish and wildlife, and industrial purposes; and

[(2) any purpose authorized under the Colorado River Basin Project Act (43 U.S.C. 1501 et seq.).

[SEC. 104. ALLOCATION OF CENTRAL ARIZONA PROJECT WATER.

[(a) NON-INDIAN AGRICULTURAL PRIORITY WATER.—

[(1) REALLOCATION TO INDIAN TRIBES.—

[(A) IN GENERAL.—The Secretary shall reallocate 197,500 acre-feet of agricultural priority water made available pursuant to the master agreement for use by Arizona Indian tribes, of which—

[(i) 102,000 acre-feet shall be reallocated to the Gila River Indian Community;

[(ii) 28,200 acre-feet shall be reallocated to the Tohono O'odham Nation; and

[(iii) subject to the conditions specified in subparagraph (B), 67,300 acre-feet shall be reallocated to Arizona Indian tribes.

[(B) CONDITIONS.—The reallocation of agricultural priority water under subparagraph (A)(iii) shall be subject to the conditions that—

[(i) before the Secretary may reallocate the water to an Arizona Indian tribe, Congress enacts a law approving an Indian water rights settlement for that Arizona Indian tribe that provides for the reallocation; and

[(ii) the agricultural priority water shall not, without specific authorization by Act of Congress, be leased, exchanged, forborne, or otherwise transferred by an Arizona Indian tribe for any direct or indirect use outside the reservation of the Arizona Indian tribe.

[(2) REALLOCATION TO THE ARIZONA DEPARTMENT OF WATER RESOURCES.—

[(A) IN GENERAL.—Subject to subparagraph (B), the Secretary shall reallocate 96,295 acre-feet of agricultural priority water made available pursuant to the master agreement to the Arizona Department of Water Resources, to be held under contract in trust for further allocation under subparagraph (C).

[(B) REQUIRED DOCUMENTATION.—The reallocation of agricultural priority water under subparagraph (A) is subject to the condition that the Secretary execute any appropriate documents to memorialize the reallocation, including—

[(i) an allocation decision; and

[(ii) a contract that prohibits the direct use of the agricultural priority water by the Arizona Department of Water Resources.

[(C) FURTHER ALLOCATION.—With respect to the allocation of agricultural priority water under subparagraph (A)—

[(i) before that water may be further allocated—

[(I) the Director shall submit to the Secretary, and the Secretary shall receive, a recommendation for reallocation;

[(II) as soon as practicable after receiving the recommendation, the Secretary shall carry out all necessary reviews of the proposed reallocation, in accordance with applicable Federal law; and

[(III) if the recommendation is rejected by the Secretary, the Secretary shall—

[(aa) request a revised recommendation from the Director; and

[(bb) proceed with any reviews required under subclause (II); and

[(ii) as soon as practicable after the date on which agricultural priority water is further allocated, the Secretary shall offer to enter into a subcontract for that water in accordance with paragraphs (1) and (2) of subsection (d).

[(D) MASTER AGREEMENT.—The reallocation of agricultural priority water under subparagraphs (A) and (C) is subject to the master agreement, including certain rights provided by the master agreement to water users in Pinal County, Arizona.

[(3) PRIORITY.—The agricultural priority water reallocated under paragraphs (1) and (2) shall be subject to the condition that the water retain its non-Indian agricultural delivery priority.

[(b) UNCONTRACTED CENTRAL ARIZONA PROJECT MUNICIPAL AND INDUSTRIAL PRIORITY WATER.—

[(1) REALLOCATION.—The Secretary shall, on the recommendation of the Director, reallocate 65,647 acre-feet of uncontracted municipal and industrial water, of which—

[(A) 285 acre-feet shall be reallocated to the town of Superior, Arizona;

[(B) 806 acre-feet shall be reallocated to the Cave Creek Water Company;

[(C) 1,931 acre-feet shall be reallocated to the Chaparral Water Company;

[(D) 508 acre-feet shall be reallocated to the town of El Mirage, Arizona;

[(E) 7,211 acre-feet shall be reallocated to the city of Goodyear, Arizona;

[(F) 147 acre-feet shall be reallocated to the H2O Water Company;

[(G) 7,115 acre-feet shall be reallocated to the city of Mesa, Arizona;

[(H) 5,527 acre-feet shall be reallocated to the city of Peoria, Arizona;

[(I) 2,981 acre-feet shall be reallocated to the city of Scottsdale, Arizona;

[(J) 808 acre-feet shall be reallocated to the AVRA Cooperative;

[(K) 4,986 acre-feet shall be reallocated to the city of Chandler, Arizona;

[(L) 1,071 acre-feet shall be reallocated to the Del Lago (Vail) Water Company;

[(M) 3,053 acre-feet shall be reallocated to the city of Glendale, Arizona;

[(N) 1,521 acre-feet shall be reallocated to the Community Water Company of Green Valley, Arizona;

[(O) 4,602 acre-feet shall be reallocated to the Metropolitan Domestic Water Improvement District;

[(P) 3,557 acre-feet shall be reallocated to the town of Oro Valley, Arizona;

[(Q) 8,206 acre-feet shall be reallocated to the city of Phoenix, Arizona;

[(R) 2,876 acre-feet shall be reallocated to the city of Surprise, Arizona;

[(S) 8,206 acre-feet shall be reallocated to the city of Tucson, Arizona; and

[(T) 250 acre-feet shall be reallocated to the Valley Utilities Water Company.

[(2) SUBCONTRACTS.—

[(A) IN GENERAL.—As soon as practicable after the date of enactment of this Act, in accordance with paragraphs (1) and (2) of subsection (d) and any applicable Federal laws, the Secretary shall offer to enter into subcontracts for the delivery of the uncontracted municipal and industrial water reallocated under paragraph (1).

[(B) REVISED RECOMMENDATION.—If the Secretary is precluded under applicable Federal law from entering into a subcontract with an entity identified in paragraph (1), the Secretary shall—

[(i) request a revised recommendation from the Director; and

[(ii) on receipt of a recommendation under clause (i), reallocate and enter into a subcontract for the delivery of the water in accordance with subparagraph (A).

[(c) LIMITATIONS.—

[(1) AMOUNT.—

[(A) IN GENERAL.—The total amount of entitlements under long-term contracts (as defined in the repayment stipulation) for the delivery of Central Arizona Project water in the State shall not exceed 1,415,000 acre-feet, of which—

[(i) 667,724 acre-feet shall be—

[(I) under contract to Arizona Indian tribes; or

[(II) available to the Secretary for allocation to Arizona Indian tribes; and

[(ii) 747,276 acre-feet shall be under contract or available for allocation to—

[(I) non-Indian municipal and industrial entities;

[(II) the Arizona Department of Water Resources; and

[(III) non-Indian agricultural entities.

[(B) EXCEPTION.—Subparagraph (A) shall not apply to Central Arizona Project water delivered to water users in Arizona in exchange for Gila River water delivered to the State of New Mexico or to water users in New Mexico as provided in section 304 of the Colorado River Basin Project Act (43 U.S.C. 1524).

[(2) TRANSFER.—

[(A) IN GENERAL.—Except pursuant to the master agreement, Central Arizona Project water may not be transferred from—

[(i) a use authorized under paragraph (1)(A)(i) to a use authorized under paragraph (1)(A)(ii); or

[(ii) a use authorized under paragraph (1)(A)(ii) to a use authorized under paragraph (1)(A)(i).

[(B) EXCEPTIONS.—

[(i) LEASES.—A lease of Central Arizona Project water by an Arizona Indian tribe to an entity described in paragraph (1)(A)(ii) under an Indian water rights settlement approved by an Act of Congress shall not be considered to be a transfer for purposes of subparagraph (A).

[(ii) EXCHANGES.—An exchange of Central Arizona Project water by an Arizona Indian tribe to an entity described in paragraph (1)(A)(ii) shall not be considered to be a transfer for purposes of subparagraph (A).

[(d) CENTRAL ARIZONA PROJECT CONTRACTS AND SUBCONTRACTS.—

[(1) IN GENERAL.—Notwithstanding section 6 of the Act of August 4, 1939 (commonly known as the ''Reclamation Project Act of 1939'') (43 U.S.C. 485e), and paragraphs (2) and (3) of section 304(b) of the Colorado River Basin Project Act (43 U.S.C. 1524(b)), as soon as practicable after the date of enactment of this Act, the Secretary shall offer to enter into subcontracts or to amend all Central Arizona Project contracts and subcontracts in effect as of that date in accordance with paragraph (2).

[(2) REQUIREMENTS.—All subcontracts and amendments to Central Arizona Project contracts and subcontracts under paragraph (1)—

[(A) shall be for permanent service (within the meaning of section 5 of the Boulder Canyon Project Act of 1928 (43 U.S.C. 617d));

[(B) shall have an initial delivery term that is the greater of—

[(i) 100 years; or

[(ii) a term—

[(I) authorized by Congress; or

[(II) provided under the appropriate Central Arizona Project contract or subcontract in existence on the date of enactment of this Act;

[(C) shall conform to the shortage sharing criteria described in paragraph 8.16 of the Gila River agreement and paragraph 5.3 of the Tohono O'odham settlement agreement;

[(D) shall include the prohibition and exception described in subsection (e); and

[(E) shall not require—

[(i) that any Central Arizona Project water received in exchange for effluent be deducted from the contractual entitlement of the CAP contractor or CAP subcontractor; or

[(ii) that any additional modification of the Central Arizona Project contracts or subcontracts be made as a condition of acceptance of the subcontract or amendments.

[(3) APPLICABILITY.—This subsection does not apply to—

[(A) a subcontract for non-Indian agricultural use; and

[(B) a contract executed under paragraph 5(d) of the repayment stipulation.

[(e) PROHIBITION ON TRANSFER.—

[(1) IN GENERAL.—Except as provided in paragraph (2), no Central Arizona Project water shall be leased, exchanged, forborne, or otherwise transferred in any way for use directly or indirectly outside the State.

[(2) EXCEPTIONS.—Central Arizona Project water may be—

[(A) leased, exchanged, forborne, or otherwise transferred under an agreement with the Arizona Water Banking Authority that is in accordance with section 414 of title 43, Code of Federal Regulations; and

[(B) delivered to users in Arizona in exchange for Gila River water delivered to the State of New Mexico or to water users in New Mexico as provided in section 304 of the Colorado River Basin Project Act (43 U.S.C. 1524).

[(3) EFFECT OF SUBSECTION.—Nothing in this subsection prohibits any entity from entering into a contract with the Arizona Water Banking Authority or a successor of the Authority under State law.

[SEC. 105. FIRMING OF CENTRAL ARIZONA PROJECT INDIAN WATER.

[(a) FIRMING PROGRAM.—The Secretary and the State shall develop a firming program to ensure that 60,648 acre-feet of the agricultural priority water made available pursuant to the master agreement and reallocated to Arizona Indian tribes under subsection 104(a)(1), shall, for a 100-year period, be delivered during water shortages in the same manner as water with a municipal and industrial delivery priority in the Central Arizona Project system is delivered during water shortages.

[(b) DUTIES.—

[(1) SECRETARY.—The Secretary shall—

[(A) firm 28,200 acre-feet of agricultural priority water reallocated to the Tohono O'odham Nation under section 104(a)(1)(A)(ii); and

[(B) firm 8,724 acre-feet of agricultural priority water reallocated to Arizona Indian tribes under section 104(a)(1)(A)(iii).

[(2) STATE.—The State shall—

[(A) firm 15,000 acre-feet of agricultural priority water reallocated to the Gila River Indian Community under section 104(a)(1)(A)(i);

[(B) firm 8,724 acre-feet of agricultural priority water reallocated to Arizona Indian tribes under section 104(a)(1)(A)(iii); and

[(C) assist the Secretary in carrying out obligations of the Secretary under paragraph (1)(A) in accordance with section 306 of the Southern Arizona Water Rights Settlement Amendments Act (as added by section 301).

[(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary such sums as are necessary to carry out the duties of the Secretary under subsection (b)(1).

[SEC. 106. ACQUISITION OF AGRICULTURAL PRIORITY WATER.

[(a) APPROVAL OF AGREEMENT.—

[(1) IN GENERAL.—The master agreement is authorized, ratified, and confirmed.

[(2) EXHIBITS.—The Secretary shall execute any of the exhibits to the master agreement that have not been executed as of the date of enactment of this Act.

[(b) NONREIMBURSABLE DEBT.—In accordance with the master agreement, the portion of debt incurred under section 9(d) of the Act of August 4, 1939 (commonly known as the ''Reclamation Project Act of 1939'') (43 U.S.C. 485h), and identified in the master agreement as nonreimbursable to the United States, shall be nonreimbursable and nonreturnable to the United States in an amount not to exceed $73,561,337.

[(c) EXEMPTION.—The Reclamation Reform Act of 1982 (43 U.S.C. 390aa et seq.) and any other acreage limitation or full cost pricing provisions of Federal law shall not apply to—

[(1) land within the exterior boundaries of the Central Arizona Water Conservation District or served by Central Arizona Project water;

[(2) land within the exterior boundaries of the Salt River Reservoir District;

[(3) land held in trust by the United States for an Arizona Indian tribe that is—

[(A) within the exterior boundaries of the Central Arizona Water Conservation District; or

[(B) served by Central Arizona Project water; and

[(4) any person, entity, or land, solely on the basis of—

[(A) receipt of any benefits under this Act;

[(B) execution or performance of the Gila River agreement; or

[(C) the use, storage, delivery, lease, or exchange of Central Arizona Project water.

[SEC. 107. LOWER COLORADO RIVER BASIN DEVELOPMENT FUND.

[(a) IN GENERAL.—Section 403 of the Colorado River Basin Project Act (43 U.S.C. 1543) is amended by striking subsection (f) and inserting the following:

[''(f) ADDITIONAL USES OF REVENUE FUNDS.—

[''(1) CREDITING AGAINST CENTRAL ARIZONA WATER CONSERVATION DISTRICT PAYMENTS.—Funds credited to the development fund pursuant to subsection (b) and paragraphs (1) and (3) of subsection (c), the portion of revenues derived from the sale of power and energy for use in the State of Arizona pursuant

to subsection (c)(2) in excess of the amount necessary to meet the requirements of paragraphs (1) and (2) of subsection (d), and any annual payment by the Central Arizona Water Conservation District to effect repayment of reimbursable Central Arizona Water Conservation District to effect repayment of reimbursable Central Arizona Project construction costs, shall be credited annually against the annual payment owed by the Central Arizona Water Conservation District to the United States for the Central Arizona Project.

[''(2) FURTHER USE OF REVENUE FUNDS CREDITED AGAINST PAYMENTS OF CENTRAL ARIZONA WATER CONSERVATION DISTRICT.—After being credited in accordance with paragraph (1), the funds and portion of revenues described in that paragraph shall be available annually, without further appropriation, in order of priority—

[''(A) to pay fixed operation, maintenance, and replacement charges associated with the delivery of Central Arizona Project water under long-term contracts for use by Arizona Indian tribes (as defined in section 2 of the Arizona Water Settlements Act);

[''(B) to make deposits, totaling $53,000,000 in the aggregate, in the Gila River Indian Community Water OM&R Trust Fund established by section 207 of the Gila River Indian Community Water Rights Settlement Act of 2003;

[''(C) to pay an amount equal to $147,000,000, adjusted to reflect changes since January 1, 2000, in the Consumer Price Index for all urban consumers published by the Department of Labor, to the Gila River Indian Community to rehabilitate the San Carlos Irrigation Project, of which not more than $25,000,000 shall be available annually, on request by the Gila River Indian Community in accordance with attachment 6.5.1 of exhibit 20.1 of the Gila River Indian Community Water Rights Settlement, dated July 1, 2002, except that the total amount shall be increased or decreased, as appropriate, based on ordinary fluctuations in construction cost indices applicable to the types of construction involved in the rehabilitation;

[''(D) in addition to amounts made available for the purpose through annual appropriations, and without regard to priority—

[''(i) to pay the costs associated with the construction of distribution systems required to implement the provisions of—

[''(I) the contract entered into between the United States and the Gila River Indian Community, numbered 6–07–03–W0345, and dated May 4, 1998;

[''(II) section 3707(a)(1) of the San Carlos Apache Tribe Water Rights Settlement Act of 1992 (106 Stat. 4747); and

[''(III) subsections (a) and (b) of section 304 of the Southern Arizona Water Rights Settlement Amendments Act of 2003;

[''(ii) to pay any costs authorized by Congress to be paid (including any costs to construct distribution systems and excluding costs otherwise payable by non-Federal, non-Indian parties) under any Arizona Indian water rights settlement Act enacted after May 9, 2000; and

[''(iii) to pay other costs authorized under—

[''(I) the Gila River Indian Community Water Rights Settlement Act of 2003; or

[''(II) the Southern Arizona Water Rights Settlement Amendments Act of 2003;

[''(E) in addition to amounts made available for the purpose through annual appropriations—

[''(i) to pay the costs associated with the construction of on-reservation Central Arizona Project distribution systems for the Yavapai Apache (Camp Verde), Tohono O'odham Nation (Sif Oidak District), Pascua Yaqui, and Tonto Apache tribes; and

[''(ii) to make payments to those tribes in accordance with paragraph 8(d)(i)(1)(iv) of the Central Arizona Project repayment stipulation (as defined in section 2 of the Arizona Water Settlements Act), except that if a water rights settlement Act of Congress authorizes such construction, the applicable tribes shall be treated, and payments shall be made, in accordance with subparagraph (D)(ii); and

[''(F) if any amounts remain in the development fund at the end of a fiscal year, to be carried over to the following fiscal year for use for the purposes described in subparagraphs (A) through (E).

[''(3) REVENUE FUNDS IN EXCESS OF REVENUE FUNDS CREDITED AGAINST CENTRAL ARIZONA WATER CONSERVATION DISTRICT PAYMENTS.—The funds and portion of revenues described in paragraph (1) that are in excess of amounts credited under paragraph (1) shall be available, on an annual basis, without further appropriation, in order of priority—

[''(A) to pay fixed operation, maintenance and replacement charges associated with the delivery of Central Arizona Project water under long-term contracts held by Arizona Indian tribes (as defined in section 2 of the Arizona Water Settlements Act);

[''(B) to make the final outstanding annual payment for the costs of each unit of the projects authorized under title III that are to be repaid by the Central Arizona Water Conservation District;

[''(C) to reimburse the general fund of the Treasury for fixed operation, maintenance, and replacement charges previously paid under paragraph (2)(A);

[''(D) to reimburse the general fund of the Treasury for costs associated with any Indian water rights settlement previously paid under subparagraphs (B) through (E) of paragraph (2);

[''(E) to pay to the general fund of the Treasury the annual installment on any debt relating to the Central Arizona Project under section 9(d) of the Act of August 4, 1939 (commonly known as the ''Reclamation Project Act of 1939'') (43 U.S.C. 485h(d)) made nonreimbursable under section 106(b) of the Central Arizona Project Settlement Act of 2003;

[''(F) to pay to the general fund of the Treasury the difference between—

[''(I) the costs of each unit of the projects authorized under title III that are repayable by the Central Arizona Water Conservation District; and

[''(II) any costs allocated to repayable functions under any Central Arizona Project cost allocation undertaken by the United States; and

[''(G) for deposit in the general fund of the Treasury.

[''(4) INVESTMENT OF AMOUNTS.—

[''(A) IN GENERAL.—The Secretary of the Treasury shall invest such portion of the development fund as is not, in the judgment of the Secretary of the Interior, required to meet current needs of the development fund. Investments may be made only in interest-bearing obligations of the United States.

[''(B) ACQUISITION OF OBLIGATIONS.—For the purpose of investments under subparagraph (A), obligations may be acquired—

[''(i) on original issue at the issue price; or

[''(ii) by purchase of outstanding obligations at the market price.

[''(C) SALE OF OBLIGATIONS.—Any obligation acquired by the development fund may be sold by the Secretary of the Treasury at the market price.

[''(D) CREDITS TO FUND.—The interest on, and the proceeds from the sale or redemption of, any obligations held in the development fund shall be credited to and form a part of the development fund.''.

[(b) LIMITATION.—Before the date on which the findings of the Secretary under section 207(d) have been published in the Federal Register, amounts made available under the amendments in subsection (a)—

[(1) shall be identified and retained in the Lower Colorado River Basin Development Fund established by section 403 of the Colorado River Basin Project Act (43 U.S.C. 1543); and

[(2) shall not be expended or withdrawn from that fund until the date on which the findings described in section 207(d) are published in the Federal Register.

[(c) TECHNICAL AMENDMENTS.—The Colorado River Basin Project Act (43 U.S.C. 1501 et seq.) is amended—

[(1) in section 403(g), by striking ''clause (c)(2)'' and inserting ''subsection (c)(2)'';

[(2) by striking ''clause'' each other place it appears and inserting ''paragraph''; and

[(3) by striking ''clauses'' each place it appears and inserting ''paragraphs''.

[SEC. 108. EFFECT.

[Except for provisions relating to the allocation of Central Arizona Project water and the Reclamation Reform Act of 1982 (43 U.S.C. 390aa et seq.), nothing in this title affects—

[(1) any treaty, law, or agreement governing the use of water from the Colorado River; or

[(2) any existing rights to use Colorado River water.

[SEC. 109. REPEAL.

[Section 11(h) of the Salt River Pima-Maricopa Indian Community Water Rights Settlement Act of 1988 (102 Stat. 2559) is repealed.

[SEC. 110. AUTHORIZATION OF APPROPRIATIONS.

[(a) IN GENERAL.—There are authorized to be appropriated such sums as are necessary to comply with—

[(1) the 1994 biological opinion, including any funding transfers required by the opinion;

[(2) the 1996 biological opinion, including any funding transfers required by the opinion; and

[(3) any final biological opinion resulting from the 1999 biological opinion, including any funding transfers required by the opinion.

[(b) CONSTRUCTION COSTS.—Amounts made available under subsection (a) shall be treated as Central Arizona Project construction costs.

[(c) AGREEMENTS.—

[(1) IN GENERAL.—Any amounts made available under subsection (a) may be used to carry out agreements to permanently fund long-term reasonable and prudent alternatives in accepted biological opinions relating to the Central Arizona Project.

[(2) REQUIREMENTS.—To ensure that long-term environmental compliance may be met without further appropriations, an agreement under paragraph (1) shall include a provision requiring that the contractor manage the funds through interest-bearing investments.

[SEC. 111. REPEAL ON FAILURE OF ENFORCEABILITY DATE UNDER TITLE II.

[(a) IN GENERAL.—Except as provided in subsection (b), if the Secretary does not publish a statement of findings under section 207(d) by December 31, 2007—

[(1) this title is repealed effective January 1, 2008, and any action taken by the Secretary and any contract entered under any provision of this title shall be void; and

[(2) any amounts appropriated under section 110 that remain unexpended shall immediately revert to the general fund of the Treasury.

[(b) EXCEPTION.—No subcontract amendment executed by the Secretary under the

notice of June 4, 2002 (67 Fed. Reg. 38514) shall be considered to be a contract entered into by the Secretary for purposes of subsection (a)(1).

[TITLE II—GILA RIVER INDIAN COMMUNITY WATER RIGHTS SETTLEMENT

[SEC. 201. SHORT TITLE.

[This title may be cited as the ''Gila River Indian Community Water Rights Settlement Act of 2003''.

[SEC. 202. FINDINGS AND PURPOSES.

[(a) FINDINGS.—Congress finds that—

[(1) it is the policy of the United States, in keeping with the trust responsibility of the United States to Indian tribes—

[(A) to promote Indian self-determination and economic self-sufficiency; and

[(B) to settle, whenever possible, Indian water rights claims without lengthy and costly litigation;

[(2) meaningful Indian self-determination and economic self-sufficiency largely depend on the development of viable Indian reservation economies;

[(3) the quantification of rights to water and development of facilities needed to use tribal water supplies in an effective manner is essential to the development of viable Indian reservation economies, particularly in arid western States;

[(4) continued uncertainty concerning the extent of the entitlement of the Gila River Indian Community to water—

[(A) has severely limited access by the Community to water and financial resources necessary to develop valuable agricultural land; and

[(B) has frustrated the efforts of the Community to achieve meaningful self-determination and self-sufficiency;

[(5) proceedings to determine and enforce the full extent and nature of, and injury to, the water rights of the Community are currently pending in the United States District Court for the District of Arizona, and water rights claims are pending in the Superior Court of the State in and for Maricopa County as part of the Gila River adjudication proceedings;

[(6) because final resolution of pending litigation would take many years and entail great expense, continue economically and socially damaging limits to access to water by the Community, prolong uncertainty concerning the availability of water supplies, and seriously impair long-term economic planning and development, the Community and the neighbors of the Community have sought to settle their disputes concerning water and reduce the burdens of litigation;

[(7) after many years of negotiation, the United States, the Community, and the neighbors of the Community, many of whom are parties to the Gila River adjudication proceedings, have entered into a settlement agreement to—

[(A) resolve permanently certain damage claims and all water rights claims between the United States and the Community and its neighbors; and

[(B) recognize the right of the allottees to use water for irrigation purposes on the Reservation; and

[(8) to advance the goals of Federal Indian policy and to act consistently with the trust responsibility of the United States to the Community and the allottees, it is appropriate that the United States participate in the implementation of the Gila River agreement and contribute funds to enable the Community and the allottees to use the water entitlements recognized or provided for in the Gila River agreement or this title in developing a diverse and efficient economy.

[(b) PURPOSES.—The purposes of this title are—

[(1) to authorize, ratify, and confirm the Gila River agreement;

[(2) to authorize and direct the Secretary to execute and perform all obligations of the Secretary under the Gila River agreement; and

[(3) to authorize the actions and appropriations necessary for the United States to meet obligations of the United States under the Gila River agreement and this title.

[SEC. 203. APPROVAL OF THE GILA RIVER INDIAN COMMUNITY WATER RIGHTS SETTLEMENT AGREEMENT.

[(a) IN GENERAL.—Except to the extent that the Gila River agreement conflicts with a provision of this title, the Gila River agreement is authorized, ratified, and confirmed.

[(b) EXECUTION OF AGREEMENT.—The Secretary shall execute the Gila River agreement, including all exhibits to the Gila River agreement requiring the signature of the Secretary and any amendments necessary to make the Gila River agreement consistent with this title, after the Community has executed the Gila River agreement and any such amendments.

[(c) NATIONAL ENVIRONMENTAL POLICY ACT.—

[(1) NO MAJOR FEDERAL ACTION.—Execution of the Gila River agreement by the Secretary under this section shall not constitute a major Federal action under the National Environmental Policy Act (42 U.S.C. 4321 et seq.).

[(2) ENVIRONMENTAL COMPLIANCE ACTIVITIES.—The Secretary shall promptly carry out the environmental compliance activities necessary to implement the Gila River agreement, including activities under the National Environmental Policy Act and the Endangered Species Act (16 U.S.C. 1531 et seq.).

[(3) LEAD AGENCY.—The Bureau of Reclamation shall be designated as the lead agency with respect to environmental compliance.

[(d) REHABILITATION AND OPERATION, MAINTENANCE, AND REPLACEMENT OF CERTAIN WATER WORKS.—

[(1) IN GENERAL.—In accordance with this title and exhibit 20.1 to the Gila River agreement, and as provided in this subsection, the Secretary shall provide for the rehabilitation and operation, maintenance, and replacement of the San Carlos Irrigation Project water diversion and delivery works.

[(2) JOINT CONTROL BOARD AGREEMENT.—The Secretary shall execute the joint control board agreement described in exhibit 20.1 to the Gila River agreement.

[(3) REHABILITATION COSTS ALLOCABLE TO THE COMMUNITY.—The rehabilitation costs allocable to the Community under exhibit 20.1 to the Gila River agreement shall be paid from the funds available under paragraph (2)(C) of section 403(f) of the Colorado River Basin Project Act (43 U.S.C. 1543(f)) (as amended by section 107(a)).

[(4) REHABILITATION COSTS NOT ALLOCABLE TO THE COMMUNITY.—

[(A) IN GENERAL.—The rehabilitation costs not allocable to the Community under exhibit 20.1 to the Gila River agreement shall be provided from—

[(i) funds available under paragraph (2)(D)(iii)(I) of section 403(f) of the Colorado River Basin Project Act (43 U.S.C. 1543(f)) (as amended by section 107(a)); or

[(ii) funds made available under section 213(a).

[(B) SUPPLEMENTARY REPAYMENT CONTRACT.—The Secretary shall execute a supplementary repayment contract with the San Carlos Irrigation and Drainage District in the form provided for in exhibit 20.1 to the Gila River agreement which shall, among other things, provide that—

[(i) in accomplishing the work under the supplemental repayment contract, the San Carlos Irrigation and Drainage District may use the labor and contracting authorities that are available under State law; and

[(ii) a portion of the San Carlos Irrigation and Drainage District's share of the rehabilitation costs specified in exhibit 20.1 to the Gila River agreement shall be nonreimbursable.

[(5) LEAD AGENCY.—The Bureau of Reclamation shall be designated as the lead agency for oversight of the construction and rehabilitation of the San Carlos Irrigation Project authorized by this section.

[(6) OPERATION AND MAINTENANCE RESPONSIBILITY.—

[(A) IN GENERAL.—The Secretary shall retain the operation and maintenance responsibility for the CRR Project works until such time as the Community assumes that responsibility pursuant to applicable law.

[(B) FINANCIAL RESPONSIBILITY.—The Secretary shall retain sole financial responsibility for the payment, on behalf of the Community, of the portion of the operation and maintenance costs that are attributable to the Community for the operation and maintenance of the San Carlos Irrigation Project.

[SEC. 204. WATER RIGHTS.

[(a) RIGHTS HELD IN TRUST.—

[(1) IN GENERAL.—Subject to paragraph (2), the water rights of the Community described in the Gila River agreement shall be held in trust by the United States on behalf of the Community.

[(2) ALLOTTEES.—As specified in and provided for under this Act, allottees shall be entitled to an allocation of water for irrigation purposes from the water resources described in subparagraph 4.1.1 of the Gila River agreement.

[(3) NO AUTHORIZATION.—Nothing in this Act authorizes any action, claim, or lawsuit by an allottee against any person, entity, corporation, or municipal corporation, or a tribal government or the United States, under Federal, State, or other law.

[(b) REALLOCATION.—In accordance with this title and the Gila River agreement, the Secretary shall reallocate to the Community and contract for the delivery of—

[(1) an annual entitlement to 18,600 acre-feet of CAP agricultural priority water in accordance with the agreement among the Secretary, the Community, and Roosevelt Water Conservation District dated August 7, 1992;

[(2) an annual entitlement to 18,100 acre-feet of CAP Indian priority water, which was permanently relinquished by Harquahala Valley Irrigation District in accordance with Contract No. 3–07–W0290 among the Central Arizona Water Conservation District, the Harquahala Valley Irrigation District, and the United States, and converted to CAP Indian priority water under the Fort McDowell Indian Community Water Rights Settlement Act of 1990 (104 Stat. 4480);

[(3) on execution of an exchange and lease agreement among the Community, the United States, and Asarco, an annual entitlement to 17,000 acre-feet of CAP municipal and industrial priority water under the subcontract among the United States, the Central Arizona Water Conservation District, and Asarco, Subcontract No. 3–07–30–W0307, dated November 7, 1993; and

[(4) as provided in section 104(a)(1)(A)(i), an annual entitlement to 102,000 acre-feet of CAP agricultural priority water acquired pursuant to the master agreement.

[(c) WATER SERVICE CAPITAL CHARGES.—The Community shall not be responsible for water service capital charges for CAP water.

[(d) ALLOCATION AND REPAYMENT.—For the purpose of determining the allocation and repayment of costs of any stages of the Central Arizona Project constructed after the

date of enactment of this Act, the costs associated with the delivery of Community CAP water, whether that water is delivered for use by the Community or in accordance with any assignment, exchange, lease, option to lease, or other agreement for the temporary disposition of water entered into by the Community—

[(1) shall be nonreimbursable; and

[(2) shall be excluded from the repayment obligation of the Central Arizona Water Conservation District.

[(e) APPLICATION OF PROVISIONS.—

[(1) IN GENERAL.—The water rights recognized and confirmed to the Community by the Gila River agreement and this title shall be subject to section 7 of the Act of February 8, 1887 (25 U.S.C. 381).

[(2) WATER CODE.—Not later than 3 years after the enforceability date, the Community shall enact a water code, subject to any applicable provision of law, that—

[(A) manages, regulates, and controls the water resources on the Reservation;

[(B) governs all of the water rights that are held in trust by the United States for the benefit of the Community; and

[(C) includes, subject to approval of the Secretary—

[(i) a process by which any allottee, or any successor in interest to an allottee, may request and be provided with an allocation of water for irrigation use on allotted land of the allottee; and

[(ii) a due process system for the consideration and determination of any request by any allottee, or any successor in interest to an allottee, for an allocation of water, including a process for appeal and adjudication of denied or disputed distributions of water and for resolution of contested administrative decisions.

[(3) ADMINISTRATION.—The Secretary shall administer all rights to water granted or confirmed to the Community by the Gila River agreement until such date as the water code described in paragraph (2) has been enacted and approved by the Secretary.

[SEC. 205. COMMUNITY WATER DELIVERY CONTRACT AMENDMENTS.

[(a) IN GENERAL.—The Secretary shall amend the Community water delivery contract to provide, among other things, in accordance with the Gila River agreement, that—

[(1) the contract shall be—

[(A) for permanent service (within the meaning of section 5 of the Boulder Canyon Project Act (43 U.S.C. 617d)); and

[(B) without limit as to term;

[(2) the Community may, with the approval of the Secretary—

[(A) enter into contracts or options to lease (for a term not to exceed 100 years) or contracts or options to exchange, Community CAP water within Maricopa, Pinal, Pima, La Paz, Yavapai, Gila, Graham, Greenlee, Santa Cruz, or Coconino Counties, Arizona, providing for the temporary delivery to others of any portion of the Community CAP water; and

[(B) renegotiate any lease at any time during the term of the lease, so long as the term of the renegotiated lease does not exceed 100 years;

[(3)(A) the Community, and not the United States, shall be entitled to all consideration due to the Community under any leases or options to lease and exchanges or options to exchange Community CAP water entered into by the Community; and

[(B) the United States shall have no trust obligation or other obligation to monitor, administer, or account for any consideration received by the Community under any such leases or options to lease and exchanges or options to exchange;

[(4)(A) all Community CAP water shall be delivered through the CAP system; and

[(B) if the delivery capacity of the CAP system is significantly reduced or is anticipated to be significantly reduced for an extended period of time, the Community shall have the same CAP delivery rights as other CAP contractors and CAP subcontractors, if such CAP contractors or CAP subcontractors are allowed to take delivery of water other than through the CAP system;

[(5) the Community may use Community CAP water on or off the Reservation for Community purposes;

[(6) as authorized by subparagraph (A) of section 403(f)(2) of the Colorado River Basin Project Act (43 U.S.C. 1543(f)(2)) (as amended by section 107(a)) and to the extent that funds are available in the Lower Colorado River Basin Development Fund established by section 403 of that Act (43 U.S.C. 1543), the United States shall pay to the CAP operating agency the fixed OM&R charges associated with the delivery of Community CAP water, except for Community CAP water leased by others;

[(7) the costs associated with the construction of the CAP system—

[(A) shall be nonreimbursable; and

[(B) shall be excluded from any repayment obligation of the Community; and

[(8) no CAP water service capital charges shall be due or payable for Community CAP water, whether CAP water is delivered for use by the Community or is delivered under any leases, options to lease, exchanges or options to exchange Community CAP water entered into by the Community.

[(b) AMENDED AND RESTATED COMMUNITY WATER DELIVERY CONTRACT.—Notwithstanding any other provision of law, the Amended and Restated Community CAP water Delivery Contract set forth in exhibit 8.2 to the Gila River agreement is authorized, ratified, and confirmed, and the Secretary shall execute the contract.

[(c) LEASES.—The leases of Community CAP water by the Community to Phelps Dodge, and any of the Cities, attached as exhibits to the Gila River agreement, are authorized, ratified, and confirmed, and the Secretary shall execute the leases.

[(d) RECLAIMED WATER EXCHANGE AGREEMENT.—The Reclaimed Water Exchange Agreement among the cities of Chandler and Mesa, Arizona, the Community, and the United States, attached as exhibit 18.1 to the Gila River agreement, is authorized, ratified, and confirmed, and the Secretary shall execute the agreement.

[(e) PAYMENT OF CHARGES.—Neither the Community nor any recipient of Community CAP water through lease or exchange shall be obligated to pay water service capital charges or any other charges, payments, or fees for the CAP water, except as provided in the lease or exchange agreement.

[(f) PROHIBITIONS.—

[(1) USE OUTSIDE THE STATE.—None of the Community CAP water shall be leased, exchanged, forborne, or otherwise transferred in any way by the Community for use directly or indirectly outside the State.

[(2) USE OFF RESERVATION.—Except as authorized by this section and subparagraph 4.7 of the Gila River agreement, no water made available to the Community under the Gila River agreement, the Globe Equity Decree, the Haggard Decree, or this title may be sold, leased, transferred, or used off the Reservation other than by exchange.

[(3) AGREEMENTS WITH THE ARIZONA WATER BANKING AUTHORITY.—Nothing in this Act or the Gila River agreement limits the right of the Community to enter into any agreement with the Arizona Water Banking Authority, or any successor agency or entity, in accordance with State law.

[SEC. 206. SATISFACTION OF CLAIMS.

[(a) IN GENERAL.—The benefits realized by the Community, Community members, and allottees under this title shall be in complete replacement of and substitution for, and full satisfaction of, all claims of the Community, Community members, and allottees for water rights, injury to water rights, injury to water quality and subsidence damage, except as set forth in the Gila River agreement, under Federal, State, or other law with respect to the Reservation, off-Reservation trust land, and fee land.

[(b) NO RECOGNITION OF WATER RIGHTS.—Notwithstanding subsection (a) and except as provided in subsection 204(e), nothing in this title has the effect of recognizing or establishing any right of a Community member or allottee to water on the Reservation.

[SEC. 207. WAIVER AND RELEASE OF CLAIMS.

[(a) IN GENERAL.—

[(1) CLAIMS AGAINST THE STATE AND OTHERS ACTING UNDER FEDERAL, STATE, OR OTHER LAW.—

[(A) BY THE COMMUNITY.—Except as provided in the Gila River agreement, the Community, on behalf of the Community and Community members (but not members in their capacities as allottees), and the Secretary, on behalf of the Community and Community members (but not members in their capacities as allottees), as part of the performance of obligations under the Gila River agreement, are authorized to execute a waiver and release of any claims against the State (or any agency or political subdivision of the State) or any other person, entity, corporation, or municipal corporation under Federal, State, or other law for—

[(i)(I) past, present, and future claims for water rights for land within the Reservation, off-Reservation trust land, and fee land arising from time immemorial and, thereafter, forever; and

[(II) past, present, and future claims for water rights based on aboriginal occupancy of land by the Community and Community members, or their predecessors arising from time immemorial and, thereafter, forever;

[(ii)(I) past and present injury to water rights for land within the Reservation, off-Reservation trust land, and fee land arising from time immemorial through the enforceability date;

[(II) past, present, and future injury to water rights based on aboriginal occupancy of land by the Community and Community members, or their predecessors arising from time immemorial and, thereafter, forever; and

[(III) injury to water rights arising after the enforceability date for land within the Reservation, off-Reservation trust land, and fee land resulting from the off-Reservation diversion or use of water in a manner not in violation of the Gila River agreement or State law;

[(iii)(I) past and present injury to water quality (other than claims arising out of the actions that resulted in the remediations described in exhibit 25.2.1.6 to the Gila River agreement), including claims for trespass, nuisance, and real property damage and claims under all current and future Federal, State, and other environmental laws and regulations (including claims under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.) and Ariz. Rev. Stat. 49–282), for land within the exterior boundaries of the Reservation, off-Reservation trust land, and fee land arising from time immemorial through December 31, 2002;

[(II) past, present, and future injury to water quality (other than claims arising out of actions that resulted in the remediations described in exhibit 25.2.1.6 to the Gila River

agreement), including claims for trespass, nuisance, and real property damage and claims under all current and future Federal, State, and other environmental laws and regulations (including claims under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.) and Ariz. Rev. Stat. 49–282), that are based on aboriginal occupancy of land by the Community and Community members, or their predecessors, arising from time immemorial and, thereafter, forever;

[(III) injury to water quality (other than claims arising out of actions that resulted in the remediations described in exhibit 25.2.1.6 to the Gila River agreement) arising after December 31, 2002, including claims for trespass, nuisance, and real property damage and claims under all current and future Federal, State, and other environmental laws and regulations (including claims under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.) and Ariz. Rev. Stat. 49–282), that result from—

[(aa) the delivery of water to the Community under the Gila River agreement;

[(bb) the off-Reservation diversion (other than pumping), or ownership or operation of structures for the off-Reservation diversion (other than pumping), of water;

[(cc) the off-Reservation pumping, or ownership or operation of structures for the off-Reservation pumping, of water in a manner not in violation of the Gila River agreement or of any applicable pumping limitations under State law;

[(dd) the recharge, or ownership or operation of structures for the recharge, of water under a State permit; and

[(ee) the off-Reservation application of water to land for irrigation;

[except that the waiver provided in this subclause shall extend only to the State (or any agency or political subdivision of the State) or any other person, entity, or municipal or other corporation to the extent that the person, entity, or corporation is engaged in an activity specified in this subclause;

[(iv) past, present, and future claims arising out of or relating in any manner to the negotiation or execution of the Gila River agreement or the negotiation or enactment of titles I and II; and

[(v)(I) past and present claims for subsidence damage occurring to land within the Reservation, off-Reservation trust land, or fee land arising from time immemorial through the enforceability date; and

[(II) subsidence damage arising after the enforceability date occurring to land within the Reservation, off-Reservation trust land, or fee land resulting from the diversion of underground water in a manner not in violation of the Gila River agreement or State law.

[(B) BY THE UNITED STATES.—Except as provided in the Gila River agreement, the United States, as trustee for the allottees, as part of the performance of obligations under the Gila River agreement, are authorized to execute a waiver and release of any claims against the State (or any agency or political subdivision of the State) or any other person, entity, corporation, or municipal corporation under Federal, State, or other law, for—

[(i)(I) past, present, and future claims for water rights for land within the Reservation arising from time immemorial and, thereafter, forever; and

[(II) past, present, and future claims for water rights based on aboriginal occupancy of land by allottees, or their predecessors arising from time immemorial and, thereafter, forever;

[(ii)(I) past and present injury to water rights for land within the Reservation arising from time immemorial through the enforceability date;

[(II) past, present, and future injury to water rights that are based on aboriginal occupancy of land by allottees or their predecessors arising from time immemorial and, thereafter, forever; and

[(III) injury to water rights arising after the enforceability date for land within the Reservation, off-Reservation trust land, and fee land resulting from the off-Reservation diversion or use of water in a manner not in violation of the Gila River agreement or State law;

[(iii)(I) past and present injury to water quality (other than claims arising out of actions that resulted in the remediations described in exhibit 25.2.1.6 to the Gila River agreement), including claims for trespass, nuisance, and real property damage and claims under all current and future Federal, State, and other environmental laws and regulations (including claims under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.) and Ariz. Rev. Stat. 49–282), with respect to land within the Reservation, arising from time immemorial through December 31, 2002;

[(II) past, present, and future injury to water quality (other than claims arising out of actions that resulted in the remediations described in exhibit 25.2.1.6 to the Gila River agreement), including claims for trespass, nuisance, and real property damage and claims under all current and future Federal, State, and other environmental laws and regulations (including claims under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.) and Ariz. Rev. Stat. 49–282), that are based on aboriginal occupancy of land by allottees or their predecessors, from time immemorial and, thereafter, forever;

[(III) injury to water quality (other than claims arising out of actions that resulted in the remediations described in exhibit 25.2.1.6 to the Gila River agreement) arising after December 31, 2002, including claims for trespass, nuisance, and real property damage and claims under all current and future Federal, State, and other environmental laws and regulations (including claims under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.) and Ariz. Rev. Stat. 49–282), that result from—

[(aa) the delivery of water to the Community or the Allottees under the Gila River agreement;

[(bb) the off-Reservation diversion (other than pumping), or ownership or operation of structures for the off-Reservation diversion (other than pumping), of water;

[(cc) the off-Reservation pumping, or ownership or operation of structures for the off-Reservation pumping, of water in a manner not in violation of the Gila River agreement or any applicable pumping limitations under State law;

[(dd) the recharge, or ownership or operation of structures for the recharge, of water under a State permit; and

[(ee) the off-Reservation application of water to land for irrigation;

[except that the waiver provided in this subclause shall extend only to the State (or any agency or political subdivision of the State) or any other person, entity, or municipal or other corporation to the extent that the person, entity, or corporation is engaged in an activity specified in this subclause;

[(iv) past, present, and future claims arising out of or relating in any manner to the negotiation or execution of the Gila River agreement or the negotiation or enactment of titles I and II; and

[(v) past and present subsidence damage occurring to land within the Reservation from time immemorial through the enforceability date.

[(2) CLAIMS FOR SUBSIDENCE.—In accordance with the subsidence remediation program under section 209, the Community, a Community member, or an allottee, and the United States, on behalf of the Community, a Community member, or an allottee, as part of the performance of obligations under the Gila River agreement, are authorized to execute a waiver and release of all claims against the State (or any agency or political subdivision of the State) or any other person, entity, corporation or municipal corporation under Federal, State, or other law for the damage claimed.

[(3) CLAIMS AGAINST THE SALT RIVER PROJECT.—Except as provided in the Gila River agreement, the Community, on behalf of the Community and Community members (but not members in their capacities as allottees), and the United States, as trustee for the Community, Community members, and allottees, as part of the performance of obligations under the Gila River agreement, are authorized to execute a waiver and release of any claim against the Salt River Project (or its successors or assigns or its officers, governors, directors, employees, agents, or shareholders) arising from the discharge, transportation, seepage, or other movement of water in, through, or from drains, canals, or other facilities or land in the Salt River Reservoir District to land in the Reservation for—

[(A) past and present injury to water rights, injury to water quality, or injury to real property arising from time immemorial through December 31, 2002; and

[(B) injury to water rights, injury to water quality, or injury to real property arising after December 31, 2002, and through the enforceability date, if the Salt River Project (or its successors or assigns) acts in accordance with the annual reservoir operations plan of the Salt River Project through the enforceability date.

[(4) CLAIMS AGAINST THE UNITED STATES.—Except as provided in the Gila River agreement, the Community, on behalf of the Community and Community members (but not members in their capacities as allottees), as part of the performance of obligations under the Gila River agreement, is authorized to execute a waiver and release of any claim against the United States (or agencies, officials, or employees of the United States) under Federal, State, or other law for—

[(A)(i) past, present, and future claims for water rights for land within the Reservation, off-Reservation trust land, and fee land arising from time immemorial and, thereafter, forever; and

[(ii) past, present, and future claims for water rights based on aboriginal occupancy of land by the Community and Community members, or their predecessors arising from time immemorial and, thereafter, forever;

[(B)(i) past and present injury to water rights for land within the Reservation, off-Reservation trust land, and fee land arising from time immemorial through the enforceability date;

[(ii) past, present, and future injury to water rights based on aboriginal occupancy of land by the Community and Community members, or their predecessors arising from time immemorial and, thereafter, forever; and

[(iii) injury to water rights arising after the enforceability date for land within the Reservation, off-Reservation trust land, or fee land resulting from the off-Reservation diversion or use of water in a manner not in violation of the Gila River agreement or applicable law;

[(C) past, present, and future claims arising out of or relating in any manner to the negotiation or execution of the Gila River agreement or the negotiation or enactment of titles I and II;

[(D)(i) past and present subsidence damage occurring to land within the Reservation, off-Reservation trust land, or fee land arising from time immemorial through the enforceability date; and

[(ii) subsidence damage arising after the enforceability date occurring to land within the Reservation, off-Reservation trust land or fee land resulting from the diversion of underground water in a manner not in violation of the Gila River agreement or applicable law; and

[(E) past and present claims for failure to protect, acquire, or develop water rights for or on behalf of the Community and Community members arising before December 31, 2002.

[(5) CLAIMS AGAINST THE COMMUNITY.—Except as provided in the Gila River agreement, the United States, in all its capacities (except as trustee for an Indian tribe other than the Community), as part of the performance of obligations under the Gila River agreement, is authorized to execute a waiver and release of any and all claims against the Community, or any agency, official, or employee of the Community, under Federal, State, or any other law for—

[(A)(i) past, present, and future claims for water rights; and

[(ii) past and present injury to water rights arising from time immemorial through the enforceability date;

[(B) injury to water rights arising after the enforceability date resulting from the diversion or use of water in a manner not in violation of the Gila River agreement or applicable law;

[(C) past, present, and future claims arising out of or relating in any manner to the negotiation or execution of the Gila River agreement, or the negotiation or enactment of titles I and II;

[(D) past and present injury to water quality, including claims described in paragraph (1)(A)(iii)(I), arising from time immemorial through December 31, 2002; and

[(E) past and present subsidence damage arising from time immemorial through the enforceability date.

[(6) CLAIMS AGAINST CERTAIN PERSONS AND ENTITIES IN THE UPPER GILA VALLEY.—

[(A) BY THE COMMUNITY AND THE UNITED STATES.—Except as provided in the UVD agreement, the Community, on behalf of the Community and Community members (but not members in their capacities as allottees), and the United States on behalf of the Community and Community members (but not members in their capacities as allottees) and, to the extent of the interest of the United States as owner of water rights for land described in articles V and VI of the Globe Equity Decree (excluding land described in article VI(2)), are authorized, as part of the performance of obligations under the UVD agreement, to execute a waiver and release of any claims against the UVD settling parties and all other persons or entities diverting or using water in a manner that is not in violation of or contrary to the terms, conditions, requirements, limitations, or other provisions of the UVD agreement, for—

[(i)(I) past, present, and future claims for water rights within the Reservation and the San Carlos Irrigation Project and, to the extent of the interest of the United States, land described in articles V and VI of the Globe Equity Decree (excluding land described in article VI(2)), arising from time immemorial and, thereafter, forever; and

[(II) past, present, and future claims for water rights based on aboriginal occupancy of land by the Community, Community members, or predecessors of Community members, arising from time immemorial and, thereafter, forever;

[(ii)(I) past and present injury to water rights for land within the Reservation and the San Carlos Irrigation Project, and, to the extent of the interest of the United States, land described in articles V and VI of the Globe Equity Decree (excluding land described in article VI(2)), arising from time immemorial and, thereafter, forever;

[(II) past, present, and future injury to water rights based on aboriginal occupancy of land by the Community, Community members, or predecessors of Community members, arising from time immemorial and, thereafter, forever; and

[(III) injury to water rights for land within the Reservation and the San Carlos Irrigation Project, and, to the extent of the interest of the United States, land described in articles V and VI of the Globe Equity Decree (excluding land described in article VI(2)), resulting from the diversion, pumping, or use of water in a manner not in violation of or contrary to the terms, conditions, limitations, requirements, or provisions of the UVD agreement;

[(iii)(I) past, present, and future claims arising out of or relating to the use of water rights appurtenant to NM 381 acres, on the conditions that such water rights remain subject to the oversight and reporting requirements set forth in the decree in Arizona v. California, 376 U.S. 340 (1964), and that the State of New Mexico shall make available on request a copy of any records prepared pursuant to that decree; and

[(II) past, present, and future claims arising out of and relating to the use of water rights for NM domestic purposes, on the conditions that such water rights remain subject to the oversight and reporting requirements set forth in the decree in Arizona v. California, 376 U.S. 340 (1964), and that the State of New Mexico shall make available on request a copy of any records prepared pursuant to that decree; and

[(iv) past, present, and future claims arising out of or relating to the negotiation or execution of the UVD agreement, or the negotiation or enactment of this Act.

[(B) BY THE UNITED STATES ON BEHALF OF ALLOTTEES.—Except as provided in the UVD agreement, the United States as trustee for the allottees, as part of the performance under the UVD agreement, is authorized to execute a waiver and release against the UV settling parties and all other persons or entities diverting or using water in a manner that is not in violation of or contrary to the terms, conditions, requirements, limitations, or other provisions of the UVD agreement, for—

[(i)(I) past, present, and future claims for water rights lands within the Reservation arising from time immemorial, and thereafter, forever; and

[(II) past, present, and future claims for water rights based on aboriginal occupancy of lands by allottees or their predecessors arising from time immemorial, and thereafter, forever;

[(ii)(I) past and present injury to water rights for lands within the Reservation arising from time immemorial, and thereafter, forever;

[(II) past, present, and future injury to water rights based on aboriginal occupancy of lands by allottees or their predecessors arising from time immemorial, and thereafter, forever; and

[(III) injury to water rights for land within the Reservation resulting from the diversion, pumping, or use of water in a manner not in violation of or contrary to the terms, conditions, limitations, requirements, or provisions of the UVD agreement;

[(iii)(I) past, present, and future claims arising out of or relating to the use of water rights appurtenant to NM 381 acres, on the conditions that such water rights remain subject to the oversight and reporting requirements set forth in the decree in Arizona v. California, 376 U.S. 340 (1964), and that the State of New Mexico shall make available on request a copy of any records prepared pursuant to that decree; and

[(II) past, present, and future claims arising out of or relating to the use of water rights for NM domestic purposes, on the conditions that such water rights remain subject to the oversight and reporting requirements set forth in the decree in Arizona v. California, 376 U.S. 340 (1964), and that the State of New Mexico shall make available on request a copy of any records prepared pursuant to that decree; and

[(iv) past, present, and future claims arising out of or relating to the negotiation or execution of the UVD agreement, or the negotiation or enactment of titles I and II.

[(b) EFFECTIVENESS OF WAIVER AND RELEASES.—

[(1) IN GENERAL.—The waivers under paragraphs (1) and (3) through (6) of subsection (a) shall become effective on the enforceability date.

[(2) CLAIMS FOR SUBSIDENCE.—The waiver under subsection (a)(2) shall become effective on execution of the waiver by—

[(A) the Community, a Community member, or an allottee; and

[(B) the United States, on behalf of the Community, a Community member, or an allottee.

[(c) LIMITATION ON CLAIMS BY THE UNITED STATES.—The United States shall not assert any claim against the State (or any agency or political subdivision of the State) or any other person, entity, or municipal or other corporation under Federal, State, or other law in the own right of the United States or on behalf of the Community, Community members, and allottees for any of the claims described in subsection (a).

[(d) ENFORCEABILITY DATE.—

[(1) IN GENERAL.—This section takes effect on the date on which the Secretary publishes in the Federal Register a statement of findings that—

[(A) to the extent the Gila River agreement conflicts with this title, the Gila River agreement has been revised through an amendment to eliminate the conflict and the Gila River agreement, so revised, has been executed by the Secretary and the Governor of the State;

[(B) the Secretary has fulfilled the requirements of—

[(i) paragraphs (1)(A)(i) and (2) of subsection (a) and subsections (b) and (d) of section 104; and

[(ii) sections 204, 205, and 209(a);

[(C) the master agreement authorized, ratified, and confirmed by section 106(a) has been executed by the parties to the master agreement, and all conditions to the enforceability of the master agreement have been satisfied;

[(D) $53,000,000 has been identified and retained in the Lower Colorado River Basin Development Fund for the benefit of the Community in accordance with section 107(b);

[(E) the State has appropriated and paid to the Community any amount to be paid under paragraph 27.4 of the Gila River agreement;

[(F) the Salt River Project has paid to the Community $500,000 under subparagraph 16.9 of the Gila River agreement;

[(G) the judgments and decrees attached to the Gila River agreement as exhibits 25.11A (Gila River adjudication proceedings) and

25.11B (Globe Equity Decree proceedings) have been approved by the respective courts;

[(H) the dismissals attached to the Gila River agreement as exhibits 25.17.1A–C, 25.17.2A–B, and 25.17.3A–B have been filed with the respective courts and any necessary dismissal orders entered;

[(I) legislation has been enacted by the State to—

[(i) implement the Southside Replenishment Program in accordance with subparagraph 5.3 of the Gila River agreement;

[(ii) authorize the firming program required by section 105; and

[(iii) establish the Upper Gila River Watershed Maintenance Program in accordance with subparagraph 26.8.1 of the Gila River agreement;

[(J) the State has entered into an agreement with the Secretary to carry out the obligation of the State under section 105(b)(2)(A); and

[(K) a final judgment has been entered in Central Arizona Water Conservation District v. United States (No. CIV 95–625–TUC–WDB(EHC), No. CIV 95–1720–PHX–EHC) (Consolidated Action) in accordance with the repayment stipulation.

[(2) FAILURE OF ENFORCEABILITY DATE TO OCCUR.—If, because of the failure of the enforceability date to occur by December 31, 2007, this section does not become effective, the Community, Community members, and allottees, and the United States on behalf of the San Carlos Irrigation and Drainage District, the Community, Community members, and allottees, shall retain the right to assert past, present, and future water rights claims, claims for injury to water rights, claims for injury to water quality, and claims for subsidence damage as to all land within the exterior boundaries of the Reservation, off-Reservation trust land, and fee land.

[SEC. 208. GILA RIVER INDIAN COMMUNITY WATER OM&R TRUST FUND.

[(a) ESTABLISHMENT.—There is established in the Treasury of the United States a trust fund to be known as the ''Gila River Indian Community Water OM&R Trust Fund''.

[(b) DEPOSITS.—Of the amounts made available under paragraph (2)(B) of section 403(f) of the Colorado River Basin Project Act (43 U.S.C. 1543(f)), the Secretary shall deposit $53,000,000 into the Water OM&R Fund.

[(c) MANAGEMENT.—Except as provided in subsection (f)(2)(A), the principal of the Water OM&R Fund, and any interest or income accruing on the principal, shall be managed in accordance with the American Indian Trust Fund Management Reform Act of 1994 (25 U.S.C. 4001 et seq.).

[(d) USE.—The principal of the Water OM&R Fund, and any interest or income accruing on the principal, shall be used by the Community as provided in the Gila River agreement to assist in paying the costs of operation, maintenance, and replacement costs associated with the delivery of CAP water for Community purposes.

[(e) WITHDRAWALS.—As provided in the American Indian Trust Fund Management Reform Act of 1994 (25 U.S.C. 4001 et seq.), the Community may—

[(1) withdraw amounts from the Water OM&R Fund; and

[(2) deposit the amounts in a private financial institution selected by agreement of the Community and the Secretary.

[(f) LIMITATIONS.—

[(1) NO DISTRIBUTION TO MEMBERS.—No part of the principal of the Water OM&R Fund, or the interest or income accruing on the principal, shall be distributed to any Community member on a per capita basis.

[(2) FUNDS NOT AVAILABLE UNTIL ENFORCEABILITY DATE.—

[(A) IN GENERAL.—Amounts in the Water OM&R Fund shall not be available for expenditure or withdrawal by the Community until the enforceability date.

[(B) ASSETS.—On and after the enforceability date, the assets of the Water OM&R Fund shall be the property of the Community.

[SEC. 209. SUBSIDENCE REMEDIATION PROGRAM.

[(a) IN GENERAL.—The Secretary shall establish a program under which the Bureau of Reclamation shall repair and remediate subsidence damage and related damage that occurs after the enforceability date.

[(b) DAMAGE.—Under the program, the Community, a Community member, or an allottee may submit to the Secretary a request for the repair or remediation of—

[(1) subsidence damage; and

[(2) damage to personal property caused by the settling of geologic strata or cracking in the earth's surface of any length or depth, which settling or cracking is caused by pumping of underground water.

[(c) REPAIR OR REMEDIATION.—The Secretary shall perform the requested repair or remediation if—

[(1) the Secretary determines that the Community has not exceeded its right to withdraw underground water under the Gila River agreement; and

[(2) the Community, Community member, or allottee, and the Secretary as trustee for the Community, Community member, or allottee, execute a waiver and release of claim in the form specified in exhibit 25.5.1, 25.5.2, or 25.5.3 to the Gila River agreement, as applicable, to become effective on satisfactory completion of the requested repair or remediation, as determined under the Gila River agreement.

[(d) SPECIFIC SUBSIDENCE DAMAGE.—Notwithstanding any other provision of this section, the Secretary, acting through the Commissioner of Reclamation, shall repair, remediate, and rehabilitate the subsidence damage that has occurred to land within the Reservation, as specified in exhibit 29.21 to the Gila River agreement.

[SEC. 210. AFTER-ACQUIRED TRUST LAND.

[(a) REQUIREMENT OF ACT OF CONGRESS.—The Community may seek to have legal title to additional land in the State located outside the exterior boundaries of the Reservation taken into trust by the United States for the benefit of the Community pursuant only to an Act of Congress enacted after the date of enactment of this Act specifically authorizing the transfer for the benefit of the Community.

[(b) WATER RIGHTS.—After-acquired trust land shall not include federally reserved rights to surface water or groundwater.

[(c) SENSE OF CONGRESS.—It is the sense of Congress that future Acts of Congress authorizing land to be taken into trust under subsection (a) should provide that such land will have only such water rights and water use privileges as would be consistent with State water law and State water management policy.

[SEC. 211. REDUCTION OF WATER RIGHTS.

[(a) REDUCTION OF TBI ELIGIBLE ACRES.—

[(1) IN GENERAL.—In accordance with this title and as provided in the UVD agreement, the Secretary shall assist in reducing the total water demand for irrigation use in the upper valley of the Gila River by—

[(A) acquiring UV decreed water rights and extinguishing or severing and transferring those rights to the San Carlos Irrigation Project for the benefit of the Community and the San Carlos Irrigation and Drainage District in accordance with applicable law; and

[(B) entering into agreements regarding reduction of water demand through fallowing programs.

[(2) ACQUISITIONS.—

[(A) REQUIRED PHASE I ACQUISITION.—Not later than December 31 of the second calendar year that begins after the enforceability date, the Secretary shall acquire the UV decreed water rights associated with 1,000 acres of land (other than special hot lands) that would have been included in the initial calculation of TBI eligible acres under the UVD agreement if the initial calculation of TBI eligible acres had been undertaken at the time of acquisition.

[(B) REQUIRED PHASE II ACQUISITION.—

[(i) IN GENERAL.—Not later than December 31 of the sixth calendar year that begins after the enforceability date, the Secretary shall acquire the UV decreed water rights associated with 1,000 acres of land (other than special hot lands) that would have been included in the initial calculation of TBI eligible acres under the UVD agreement if the initial calculation of TBI eligible acres had been undertaken at the time of the acquisition.

[(ii) REDUCTION.—The reduction of TBI eligible acres under clause (i) shall be in addition to that accomplished under subparagraph (A).

[(C) ADDITIONAL ACQUISITION IN CASE OF SETTLEMENT.—If the San Carlos Apache Tribe reaches a comprehensive settlement with the UVD settling parties and other necessary parties that is approved by Congress and finally approved by all courts the approval of which is required, not later than December 31 of the second calendar year that begins after the effective date of that settlement, the Secretary shall acquire the UV decreed water rights associated with not less than 500 nor more than 3,000 TBI eligible acres of land (other than special hot lands).

[(D) AMOUNT OF PAYMENT.—In determining the amount to be paid for water rights acquired pursuant to this paragraph, the Secretary shall take into account the fact that land associated with those rights shall be subject to the phreatophyle control requirements as provided in the UVD agreement.

[(3) REDUCTION OF ACREAGE.—Simultaneously with the acquisition of UV decreed water rights under paragraph (2), the number of TBI eligible acres, but not the number of acres of UV subjugated land, shall be reduced by the number of acres associated with those UV decreed water rights.

[(4) ALTERNATIVES TO ACQUISITION.—

[(A) SPECIAL HOT LANDS.—The Secretary may fulfill the requirements of subparagraphs (A) and (B) of paragraph (2), in full or in part, by entering into an agreement with an owner of special hot lands to prohibit permanently future irrigation of the special hot lands if the UVD settling parties simultaneously—

[(i) acquire UV decreed water rights associated with a like number of UV decreed acres that are not TBI eligible acres; and

[(ii) sever and transfer those rights to the San Carlos Irrigation Project for the benefit of the Community and the San Carlos Irrigation and Drainage District.

[(B) FALLOWING AGREEMENT.—The Secretary may carry out all or any portion of the responsibilities of the Secretary under subparagraphs (A) and (B) of paragraph (2) by entering into an agreement with 1 or more owners of UV decreed acres and the UV irrigation district in which the acres are located, if any, under which—

[(i) the number of TBI eligible acres is reduced; but

[(ii) the owner of the UV decreed acres subject to the reduction is permitted to periodically irrigate the UV decreed acres under a fallowing agreement authorized under the UVD agreement.

[(5) DISPOSITION OF ACQUIRED WATER RIGHTS.—

[(A) IN GENERAL.—Of the UV decreed water rights acquired by the Secretary pursuant to subparagraphs (A) and (B) of paragraph (2), the Secretary shall, in accordance with all applicable law and the UVD agreement—

[(i) sever, and transfer to the San Carlos Irrigation Project for the benefit of the Community and the San Carlos Irrigation and Drainage District, the UV decreed water rights associated with up to 900 UV decreed acres; and

[(ii) extinguish the balance of the UV decreed water rights so acquired (except and only to the extent that those rights are associated with a fallowing agreement authorized under paragraph (4)(B)).

[(B) SAN CARLOS APACHE SETTLEMENT.—With respect to water rights acquired by the Secretary pursuant to paragraph (2)(C), the Secretary shall, in accordance with applicable law—

[(i) sever and transfer to the San Carlos Irrigation Project, for the benefit of the Community and the San Carlos Irrigation and Drainage District, the UV decreed water rights associated with 200 UV decreed acres;

[(ii) extinguish the UV decreed water rights associated with 300 UV decreed acres; and

[(iii) transfer the balance of those acquired water rights to the San Carlos Apache Tribe pursuant to the terms of the settlement described in paragraph (2)(C).

[(b) ADDITIONAL REDUCTIONS.—

[(1) COOPERATIVE PROGRAM.—In addition to the reduction of TBI eligible acres to be accomplished under subsection (a), not later than 1 year after the enforceability date, the Secretary and the UVD settling parties shall cooperatively establish a program to purchase and extinguish UV decreed water rights associated with UV decreed acres that have not been recently irrigated.

[(2) FOCUS.—The primary focus of the program under paragraph (1) shall be to prevent any land that contains riparian habitat from being reclaimed for irrigation.

[(3) FUNDS AND RESOURCES.—The program under this subsection shall not require any expenditure of funds, or commitment of resources, by the UVD settling parties other than such incidental expenditures of funds and commitments of resources as are required to cooperatively participate in the program.

[SEC. 212. MISCELLANEOUS PROVISIONS.

[(a) WAIVER OF SOVEREIGN IMMUNITY.—If any party to the Gila River agreement brings an action in any court of the United States or any State court relating only and directly to the interpretation or enforcement of this title or the Gila River agreement (including enforcement of any indemnity provisions contained in the Gila River agreement and enforcement of an arbitration award rendered pursuant to subparagraph 12.1.9 of the UVD agreement or a petition for and collection of attorney's fees and costs pursuant to subparagraph 12.3 of the UVD agreement), and names the United States or the Community as a party—

[(1) the United States, the Community, or both, may be joined in any such action; and

[(2) any claim by the United States or the Community to sovereign immunity from the action is waived, but only for the limited and sole purpose of such interpretation or enforcement (including any indemnity provisions contained in the Gila River agreement and enforcement of an arbitration award rendered pursuant to subparagraph 12.1.9 of the UVD agreement or a petition for and collection of attorney's fees and costs pursuant to subparagraph 12.3 of the UVD agreement).

[(b) EFFECT OF ACT.—Nothing in this title quantifies or otherwise affects the water rights, or claims or entitlements to water, of any Indian tribe, band, or community, other than the Community.

[(c) LIMITATION ON CLAIMS FOR REIMBURSEMENT.—The United States shall not make a claim for reimbursement of costs arising out of the implementation of this title or the Gila River agreement against any Indian-owned land within the Reservation, and no assessment shall be made in regard to those costs against that land.

[(d) NO EFFECT ON FUTURE ALLOCATIONS.—Water received under a lease or exchange of Community CAP water under this title shall not affect any future allocation or reallocation of CAP water by the Secretary.

[(e) COMMUNITY REPAYMENT CONTRACT.—The Secretary shall execute Amendment No. 1 to the Community repayment contract, attached as exhibit 8.1 to the Gila River agreement, to provide, among other things, that the costs incurred under that contract shall be nonreimbursable by the Community.

[(f) SALT RIVER PROJECT RIGHTS AND CONTRACTS.—

[(1) IN GENERAL.—Subject to paragraph (2), the agreement between the United States and the Salt River Valley Water Users' Association dated September 6, 1917, and the rights of the Salt River Project to store water from the Salt River and Verde River at Roosevelt Dam, Horse Mesa Dam, Mormon Flat Dam, Stewart Mountain Dam, Horseshoe Dam, and Bartlett Dam and to deliver the stored water to shareholders of the Salt River Project and others for all beneficial uses and purposes recognized under State law and to the Community under the Gila River agreement, are authorized, ratified, and confirmed.

[(2) PRIORITY DATE; QUANTIFICATION.—The priority date and quantification of rights under the agreement described in paragraph (1) shall be determined in an appropriate proceeding in State court.

[(3) CARE, OPERATION, AND MAINTENANCE.—The Salt River Project shall retain sole authority and responsibility for all decisions relating to the care, operation, and maintenance of the Salt River Project water delivery system, including the Salt River Project reservoirs on the Salt River and Verde River, vested in Salt River Project under the agreement described in paragraph (1).

[(g) NEW MEXICO EXCHANGE.—Nothing in this Act affects or impairs the right of the State of New Mexico, or any water user in the State of New Mexico, to use Gila River water as provided by section 304 of the Colorado River Basin Project Act (43 U.S.C. 1524).

[(h) LIMITATION ON LIABILITY OF UNITED STATES.—

[(1) IN GENERAL.—The United States shall have no trust or other obligation—

[(A) to monitor, administer, or account for, in any manner, any of the funds paid to the Community by any party to the Gila River agreement; or

[(B) to review or approve the expenditure of those funds.

[(2) INDEMNIFICATION.—The Community shall indemnify the United States, and hold the United States harmless, with respect to any and all claims (including claims for takings or breach of trust) arising out of the receipt or expenditure of funds described in paragraph (1)(A).

[SEC. 213. AUTHORIZATION OF APPROPRIATIONS.

[(a) AUTHORIZATION OF APPROPRIATIONS.—

[(1) REHABILITATION OF IRRIGATION WORKS.—

[(A) IN GENERAL.—There is authorized to be appropriated $52,396,000, adjusted to reflect changes since January 1, 2000, under subparagraph (B) for the rehabilitation of irrigation works under section 203(d)(4).

[(B) ADJUSTMENT.—The amount under subparagraph (A) shall be adjusted by such amounts, if any, as may be required by reason of changes in construction costs as indicated by engineering cost indices applicable to the types of construction required by the rehabilitation.

[(2) BUREAU OF RECLAMATION CONSTRUCTION OVERSIGHT.—There are authorized to be appropriated such sums as are necessary for the Bureau of Reclamation to undertake the oversight of the construction projects authorized under section 203.

[(3) SUBSIDENCE REMEDIATION PROGRAM.—There are authorized to be appropriated such sums as are necessary to carry out the subsidence remediation program under section 209 (including such sums as are necessary, not to exceed $4,000,000, to carry out the subsidence remediation and repair required under section 209(d)).

[(4) WATER RIGHTS REDUCTION.—There are authorized to be appropriated such sums as are necessary to carry out the water rights reduction program under section 211.

[(5) SAFFORD FACILITY.—There are authorized to be appropriated such sums as are necessary to—

[(A) retire $13,900,000 of the debt incurred by Safford to pay costs associated with the construction of the Safford facility as identified in exhibit 26.1 to the Gila River agreement; and

[(B) pay the interest accrued on that amount.

[(6) ENVIRONMENTAL COMPLIANCE.—There are authorized to be appropriated—

[(A) such sums as are necessary to carry out—

[(i) all necessary environmental compliance activities and related preconstruction technical analyses associated with the Gila River agreement and this title; and

[(ii) any mitigation measures adopted by the Secretary; and

[(B) to carry out the mitigation measures in the Roosevelt Habitat Conservation Plan, not more than $10,000,000.

[(b) AUTHORIZED COSTS.—

[(1) IN GENERAL.—Amounts made available under subsection (a) shall be considered to be authorized costs for purposes of paragraph (2)(D)(iii) of section 403(f) of the Colorado River Basin Project Act (43 U.S.C. 1543(f)) (as amended by section 107(a)).

[(2) EXCEPTION.—Amounts made available under subsection (a)(4) to carry out section 211(b) shall not be considered to be authorized costs for purposes of section 403(f)(2)(D)(iii) of the Colorado River Basin Project Act (43 U.S.C. 1543(f)(2)(D)(iii)) (as amended by section 107(a)).

[SEC. 214. REPEAL ON FAILURE OF ENFORCEABILITY DATE.

[If the Secretary does not publish a statement of findings under section 207(d) by December 31, 2007—

[(1) this title is repealed effective January 1, 2008, and any action taken by the Secretary and any contract entered under any provision of this title shall be void;

[(2) any amounts appropriated under paragraphs (1) through (5) of section 213(a), together with any interest on those amounts, shall immediately revert to the general fund of the Treasury;

[(3) any amounts made available under section 213(b) that remain unexpended shall immediately revert to the general fund of the Treasury; and

[(4) any amounts paid by the Salt River Project in accordance with the Gila River agreement shall immediately be returned to the Salt River Project.

[TITLE III—SOUTHERN ARIZONA WATER RIGHTS SETTLEMENT

[SEC. 301. SOUTHERN ARIZONA WATER RIGHTS SETTLEMENT.

[The Southern Arizona Water Rights Settlement Act of 1982 (96 Stat. 1274) is amended to read as follows:

["TITLE III—SOUTHERN ARIZONA WATER RIGHTS SETTLEMENT

["SEC. 301. SHORT TITLE.

["This title may be cited as the 'Southern Arizona Water Rights Settlement Amendments Act of 2003'.

["SEC. 302. FINDINGS.

["Congress finds that—

["(1) water rights claims within the San Xavier Reservation and the eastern Schuk Toak District of the Tohono O'odham Nation, including water rights claims of the Nation and allottees, are the subject of lawsuits pending against the United States and numerous parties in southern Arizona (including mining companies, agricultural interests, and the city of Tucson);

["(2) the lawsuits referred to in paragraph (1)—

["(A) are expensive and time-consuming for all participants; and

["(B) threaten to cause profound adverse impacts on the health and development of the Indian and non-Indian economies of southern Arizona;

["(3) the parties to the lawsuits referred to in paragraph (1) and other persons interested in the settlement of the water rights claims within the Tucson management area have diligently attempted to settle those lawsuits;

["(4) the requirements of paragraph (1) of section 307(a) of the 1982 Act were met within 1 year of the date of enactment of that paragraph in that—

["(A) on October 11, 1983, the city of Tucson, Arizona, and the United States entered into an agreement—

["(i) to make available to the Secretary, for disposal in such manner as the Secretary determines appropriate, 28,200 acre-feet of reclaimed water; and

["(ii) to permit the Secretary to provide terms and conditions under which the Secretary may relinquish to the city of Tucson, Arizona, such quantities of water as are not needed to carry out the duties of the Secretary under the 1982 Act;

["(B)(i) on October 11, 1983, the city of Tucson, Arizona, the State, and other parties entered into an agreement with the United States to establish a cooperative fund; and

["(ii) contributions to that fund that were required to be made in accordance with section 313 of the 1982 Act were subsequently made;

["(C) on October 11, 1983, the Nation entered into an agreement with the United States in compliance with section 307(a)(1)(C) of the 1982 Act;

["(D) in the agreement of October 11, 1983, between the Nation and the United States, the Nation executed a waiver and release in compliance with section 307(a)(1)(D) of the 1982 Act;

["(5) by providing the assistance specified in this title, the United States will enable the implementation of a settlement of the lawsuits referred to in paragraph (1);

["(6) it is in the long term interest of the United States, the State, the Nation, the San Xavier District and Schuk Toak District of the Nation, and the non-Indian community of southern Arizona, that the United States assist in the implementation of a fair and equitable settlement of the water rights claims of the Nation and allottees; and

["(7) the settlement provided for under this title will—

["(A) provide flexibility in the management of water resources;

["(B) encourage the allocation of water resources in accordance with the best uses of the resources;

["(C) promote the conservation and management of water resources; and

["(D) carry out the trust responsibility of the United States with respect to—

["(i) the Nation; and

["(ii) the allottees.

["SEC. 303. DEFINITIONS.

["In this title:

["(1) ACRE-FOOT.—The term 'acre-foot' means the quantity of water necessary to cover 1 acre of land to a depth of 1 foot.

["(2) ADAMS CASE.—The term 'Adams case' means Adams v. United States (Civ. No. 93–240 TUC FRZ (D. Ariz., filed January 25, 1993)).

["(3) AFTER-ACQUIRED TRUST LAND.—The term 'after-acquired trust land' means land that—

["(A) is located—

["(i) within the State; but

["(ii) outside the exterior boundaries of the Nation's Reservation; and

["(B) is taken into trust by the United States for the benefit of the Nation after the enforceability date.

["(4) AGREEMENT OF DECEMBER 11, 1980.—The term 'agreement of December 11, 1980' means the contract for delivery of Central Arizona Project water entered into by the United States and the Nation on December 11, 1980.

["(5) AGREEMENT OF OCTOBER 11, 1983.—The term 'agreement of October 11, 1983' means the contract for the provision of water and the settlement of claims to water under the 1982 Act entered into by the United States and the Nation on October 11, 1983.

["(6) ALLOTTEE.—The term 'allottee' means a person that holds a beneficial real property interest in an Indian allotment that is—

["(A) located within the Reservation; and

["(B) held in trust by the United States.

["(7) ALLOTTEE CLASS.—The term 'allottee class' means an applicable plaintiff class certified by the court of jurisdiction in—

["(A) the Alvarez case; or

["(B) the Tucson case.

["(8) ALVAREZ CASE.—The term 'Alvarez case' means the first through fourth causes of action of the third amended complaint in Alvarez v. City of Tucson (Civ. No. 93–039 TUC FRZ (D. Ariz., filed April 21, 1993)).

["(9) APPLICABLE LAW.—The term 'applicable law' means any applicable Federal, State, tribal, or local law.

["(10) ASARCO.—The term 'Asarco' means Asarco Incorporated, a New Jersey corporation of that name, and its subsidiaries operating mining operations in the State.

["(11) ASARCO AGREEMENT.—The term 'Asarco agreement' means the agreement by that name attached to the Tohono O'odham settlement agreement as exhibit 13.1.

["(12) CAP REPAYMENT CONTRACT.—

["(A) IN GENERAL.—The term 'CAP repayment contract' means the contract dated December 1, 1988 (Contract No. 14–06–W–245, Amendment No. 1) between the United States and the Central Arizona Water Conservation District for the delivery of water and the repayment of costs of the Central Arizona Project.

["(B) INCLUSIONS.—The term 'CAP repayment contract' includes all amendments to and revisions of that contract.

["(13) CENTRAL ARIZONA PROJECT.—The term 'Central Arizona Project' means the reclamation project authorized and constructed by the United States in accordance with title III of the Colorado River Basin Project Act (43 U.S.C. 1521 et seq.).

["(14) CENTRAL ARIZONA PROJECT LINK PIPELINE.—The term 'Central Arizona Project link pipeline' means the pipeline extending from the Tucson Aqueduct of the Central Arizona Project to a point within the cooperative farm.

["(15) CENTRAL ARIZONA PROJECT SERVICE AREA.—The term 'Central Arizona Project service area' means—

["(A) the geographical area comprised of Maricopa, Pinal, and Pima Counties, Arizona, in which the Central Arizona Water Conservation District delivers Central Arizona Project water; and

["(B) any expansion of that area under applicable law.

["(16) CENTRAL ARIZONA WATER CONSERVATION DISTRICT.—The term 'Central Arizona Water Conservation District' means the political subdivision of the State that is the contractor under the CAP repayment contract.

["(17) COOPERATIVE FARM.—The term 'cooperative farm' means the farm on land served by an irrigation system and the extension of the irrigation system provided for under paragraphs (1) and (2) of section 304(c).

["(18) COOPERATIVE FUND.—The term 'cooperative fund' means the cooperative fund established by section 313 of the 1982 Act and reauthorized by section 310.

["(19) DELIVERY AND DISTRIBUTION SYSTEM.—

["(A) IN GENERAL.—The term 'delivery and distribution system' means—

["(i) the Central Arizona Project aqueduct;

["(ii) the Central Arizona Project link pipeline; and

["(iii) the pipelines, canals, aqueducts, conduits, and other necessary facilities for the delivery of water under the Central Arizona Project.

["(B) INCLUSIONS.—The term 'delivery and distribution system' includes pumping facilities, power plants, and electric power transmission facilities external to the boundaries of any farm to which the water is distributed.

["(20) EASTERN SCHUK TOAK DISTRICT.—The term 'eastern Schuk Toak District' means the portion of the Schuk Toak District (1 of 11 political subdivisions of the Nation established under the constitution of the Nation) that is located within the Tucson management area.

["(21) ENFORCEABILITY DATE.—The term 'enforceability date' means the date on which title III of the Arizona Water Settlements Act takes effect (as described in section 302(b) of the Arizona Water Settlements Act).

["(22) EXEMPT WELL.—The term 'exempt well' means a water well—

["(A) the maximum pumping capacity of which is not more than 35 gallons per minute; and

["(B) the water from which is used for—

["(i) the supply, service, or activities of households or private residences;

["(ii) landscaping;

["(iii) livestock watering; or

["(iv) the irrigation of not more than 2 acres of land for the production of 1 or more agricultural or other commodities for—

["(I) sale;

["(II) human consumption; or

["(III) use as feed for livestock or poultry.

["(23) FEE OWNER OF ALLOTTED LAND.—The term 'fee owner of allotted land' means a person that holds fee simple title in real property on the Reservation that, at any time before the date on which the person acquired fee simple title, was held in trust by the United States as an Indian allotment.

["(24) INDIAN TRIBE.—The term 'Indian tribe' has the meaning given the term in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b).

["(25) INJURY TO WATER QUALITY.—The term 'injury to water quality' means any

contamination, diminution, or deprivation of water quality under applicable law.

[''(26) INJURY TO WATER RIGHTS.—

[''(A) IN GENERAL.—The term 'injury to water rights' means an interference with, diminution of, or deprivation of water rights under applicable law.

[''(B) INCLUSION.—The term 'injury to water rights' includes a change in the underground water table and any effect of such a change.

[''(C) EXCLUSION.—The term 'injury to water rights' does not include subsidence damage or injury to water quality.

[''(27) IRRIGATION SYSTEM.—

[''(A) IN GENERAL.—The term 'irrigation system' means canals, laterals, ditches, sprinklers, bubblers, and other irrigation works used to distribute water within the boundaries of a farm.

[''(B) INCLUSIONS.—The term 'irrigation system', with respect to the cooperative farm, includes activities, procedures, works, and devices for—

[''(i) rehabilitation of fields;

[''(ii) remediation of sinkholes, sinks, depressions, and fissures; and

[''(iii) stabilization of the banks of the Santa Cruz River.

[''(28) LOWER COLORADO RIVER BASIN DEVELOPMENT FUND.—The term 'Lower Colorado River Basin Development Fund' means the fund established by section 403 of the Colorado River Basin Project Act (43 U.S.C. 1543).

[''(29) M&I PRIORITY WATER.—The term 'M&I priority water' means Central Arizona Project water that has municipal and industrial priority.

[''(30) NATION.—The term 'Nation' means the Tohono O'odham Nation (formerly known as the Papago Tribe) organized under a constitution approved in accordance with section 16 of the Act of June 18, 1934 (25 U.S.C. 476).

[''(31) NATION'S RESERVATION.—The term 'Nation's Reservation' means all land within the exterior boundaries of—

[''(A) the Sells Tohono O'odham Reservation established by the Executive order of February 1, 1917, and the Act of February 21, 1931 (46 Stat. 1202, chapter 267);

[''(B) the San Xavier Reservation established by the Executive order of July 1, 1874;

[''(C) the Gila Bend Indian Reservation established by the Executive order of December 12, 1882, and modified by Executive order of June 17, 1909;

[''(D) the Florence Village established by Public Law 95–361 (92 Stat. 595);

[''(E) all land acquired in accordance with the Gila Bend Indian Reservation Lands Replacement Act (100 Stat. 1798), if title to the land is held in trust by the Secretary for the benefit of the Nation; and

[''(F) all other land to which the United States holds legal title in trust for the benefit of the Nation and that is added to the Nation's Reservation or granted reservation status in accordance with applicable Federal law before the enforceability date.

[''(32) NET IRRIGABLE ACRES.—The term 'net irrigable acres' means, with respect to a farm, the acreage of the farm that is suitable for agriculture, as determined by the Nation.

[''(33) NIA PRIORITY WATER.—The term 'NIA priority water' means Central Arizona Project water that has non-Indian agricultural priority.

[''(34) SAN XAVIER ALLOTTEES ASSOCIATION.—The term 'San Xavier Allottees Association' means the nonprofit corporation established under State law for the purpose of representing and advocating the interests of allottees.

[''(35) SAN XAVIER COOPERATIVE ASSOCIATION.—The term 'San Xavier Cooperative Association' means the entity chartered under the laws of the Nation (or a successor of that entity) that is a lessee of land within the cooperative farm.

[''(36) SAN XAVIER DISTRICT.—The term 'San Xavier District' means the district of that name, 1 of 11 political subdivisions of the Nation established under the constitution of the Nation.

[''(37) SAN XAVIER DISTRICT COUNCIL.—The term 'San Xavier District Council' means the governing body of the San Xavier District, as established under the constitution of the Nation.

[''(38) SAN XAVIER RESERVATION.—The term 'San Xavier Reservation' means the San Xavier Indian Reservation established by the Executive order of July 1, 1874.

[''(39) SCHUK TOAK FARM.—The term 'Schuk Toak Farm' means a farm constructed in the eastern Schuk Toak District served by the irrigation system provided for under section 304(c)(4).

[''(40) SECRETARY.—The term 'Secretary' means the Secretary of the Interior.

[''(41) STATE.—The term 'State' means the State of Arizona.

[''(42) SUBJUGATE.—The term 'subjugate' means to prepare land for agricultural use through irrigation.

[''(43) SUBSIDENCE DAMAGE.—The term 'subsidence damage' means injury to land, water, or other real property resulting from the settling of geologic strata or grading in the surface of the earth of any length or depth, which settling or cracking is caused by the pumping of water.

[''(44) SURFACE WATER.—The term 'surface water' means all water that is appropriable under State law.

[''(45) TOHONO O'ODHAM SETTLEMENT AGREEMENT.—The term 'Tohono O'odham settlement agreement' means the agreement (including all exhibits of and attachments to the agreement) that settles, and provides for the dismissal with prejudice of, the claims asserted in the Adams case, the Alvarez case, and the Tucson case, as executed by the parties to those cases and filed with the court of jurisdiction.

[''(46) TUCSON CASE.—The term 'Tucson case' means United States et al. v. City of Tucson, et al. (Civ. No. 75–39 TUC consol. with Civ. No. 75–51 TUC FRZ (D. Ariz., filed February 20, 1975)).

[''(47) TUCSON INTERIM WATER LEASE.—The term 'Tucson interim water lease' means the lease, and any amendments and extensions of the lease, between the city of Tucson, Arizona, and the Nation, dated October 24, 1992.

[''(48) TUCSON MANAGEMENT AREA.—The term 'Tucson management area' means the area in the State comprised of—

[''(A) the area—

[''(i) designated as the Tucson Active Management Area under the Arizona Groundwater Management Act of 1980 (1980 Ariz. Sess. Laws 1); and

[''(ii) subsequently divided into the Tucson Active Management Area and the Santa Cruz Active Management Area (1994 Ariz. Sess. Laws 296); and

[''(B) the portion of the Upper Santa Cruz Basin that is not located within the area described in subparagraph (A)(i).

[''(49) TURNOUT.—The term 'turnout' means a point of water delivery on the Central Arizona Project aqueduct.

[''(50) UNDERGROUND STORAGE.—The term 'underground storage' means storage of water accomplished under a project authorized under section 308(e).

[''(51) UNITED STATES AS TRUSTEE.—The term 'United States as Trustee' means the United States, acting on behalf of the Nation and allottees, but in no other capacity.

[''(52) VALUE.—The term 'value' means the value attributed to water based on the greater of—

[''(A) the anticipated or actual use of the water; or

[''(B) the fair market value of the water.

[''(53) WATER RIGHT.—The term 'water right' means any right in or to groundwater, surface water, or effluent under applicable law.

[''(54) 1982 ACT.—The term ''1982 Act'' means the Southern Arizona Water Rights Settlement Act of 1982 (96 Stat. 1274; 106 Stat. 3256), as in effect on the day before the enforceability date.

[''SEC. 304. WATER DELIVERY AND CONSTRUCTION OBLIGATIONS.

[''(a) WATER DELIVERY.—The Secretary shall deliver from the main project works of the Central Arizona Project, a total of 37,800 acre-feet of water suitable for agricultural use, of which—

[''(1) 27,000 acre-feet shall—

[''(A) be deliverable for use to the San Xavier Reservation; or

[''(B) otherwise be used in accordance with section 309; and

[''(2) 10,800 acre-feet shall—

[''(A) be deliverable for use to the eastern Schuk Toak District; or

[''(B) otherwise be used in accordance with section 309.

[''(b) DELIVERY AND DISTRIBUTION SYSTEMS.—The Secretary shall (without cost to the Nation, any allottee, the San Xavier Cooperative Association, or the San Xavier Allottees Association), as part of the main project works of the Central Arizona Project, design, construct, operate, maintain, and replace the delivery and distribution systems necessary to deliver the water described in subsection (a).

[''(c) DUTIES OF THE SECRETARY.—

[''(1) COMPLETION OF DELIVERY AND DISTRIBUTION SYSTEM AND IMPROVEMENT TO EXISTING IRRIGATION SYSTEM.—Except as provided in subsection (d), not later than 8 years after the enforceability date, the Secretary shall complete the design and construction of improvements to the irrigation system that serves the cooperative farm.

[''(2) EXTENSION OF EXISTING IRRIGATION SYSTEM WITHIN THE SAN XAVIER RESERVATION.—

[''(A) IN GENERAL.—Except as provided in subsection (d), not later than 8 years after the enforceability date, in addition to the improvements described in paragraph (1), the Secretary shall complete the design and construction of the extension of the irrigation system for the cooperative farm.

[''(B) CAPACITY.—On completion of the extension, the extended cooperative farm irrigation system shall serve 2,300 net irrigable acres on the San Xavier Reservation, unless the Secretary and the San Xavier Cooperative Association agree on fewer net irrigable acres.

[''(3) CONSTRUCTION OF NEW FARM.—

[''(A) IN GENERAL.—Except as provided in subsection (d), not later than 8 years after the enforceability date, the Secretary shall—

[''(i) design and construct within the San Xavier Reservation such additional canals, laterals, farm ditches, and irrigation works as are necessary for the efficient distribution for agricultural purposes that portion of the 27,000 acre-feet annually of water described in subsection (a)(1) that is not required for the irrigation systems described in paragraphs (1) and (2) of subsection (c); or

[''(ii) in lieu of the actions described in clause (i), pay to the San Xavier District $18,300,000 in full satisfaction of the obligations of the United States described in clause (i).

[''(B) ELECTION.—

[''(i) IN GENERAL.—The San Xavier District Council may make a nonrevocable election whether to receive the benefits described

under subparagraph (A) by notifying the Secretary by not later than 180 days after the enforceability date, by written and certified resolution of the San Xavier District Council.

[''(ii) NO RESOLUTION.—If the Secretary does not receive such a resolution by the deadline specified in clause (i), the Secretary shall pay $18,300,000 to the San Xavier District in lieu of carrying out the obligations of the United States under subparagraph (A)(i).

[''(C) SOURCE OF FUNDS AND TIME OF PAYMENT.—

[''(i) IN GENERAL.—Payment of $18,300,000 under this paragraph shall be made by the Secretary from the Lower Colorado River Basin Development Fund—

[''(I) not later than 60 days after an election described in subparagraph (B) is made (if such an election is made); or

[''(II) not later than 240 days after the enforceability date, if no timely election is made.

[''(ii) PAYMENT FOR ADDITIONAL STRUCTURES.—Payment of amounts necessary to design and construct such additional canals, laterals, farm ditches, and irrigation works as are described in subparagraph (A)(i) shall be made by the Secretary from the Lower Colorado River Basin Development Fund, if an election is made to receive the benefits under subparagraph (A)(i).

[''(4) IRRIGATION AND DELIVERY AND DISTRIBUTION SYSTEMS IN THE EASTERN SCHUK TOAK DISTRICT.—Except as provided in subsection (d), not later than 1 year after the enforceability date, the Secretary shall complete the design and construction of an irrigation system and delivery and distribution system to serve the farm that is constructed in the eastern Schuk Toak District.

[''(d) EXTENSION OF DEADLINES.—

[''(1) IN GENERAL.—The Secretary may extend a deadline under subsection (c) if the Secretary determines that compliance with the deadline is impracticable by reason of—

[''(A) a material breach by a contractor of a contract that is relevant to carrying out a project or activity described in subsection (c);

[''(B) the inability of such a contractor, under such a contract, to carry out the contract by reason of force majeure, as defined by the Secretary in the contract;

[''(C) unavoidable delay in compliance with applicable Federal and tribal laws, as determined by the Secretary, including—

[''(i) the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.); and

[''(ii) the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.); or

[''(D) stoppage in work resulting from the assessment of a tax or fee that is alleged in any court of jurisdiction to be confiscatory or discriminatory.

[''(2) NOTICE OF FINDING.—If the Secretary extends a deadline under paragraph (1), the Secretary shall—

[''(A) publish a notice of the extension in the Federal Register; and

[''(B)(i) include in the notice an estimate of such additional period of time as is necessary to complete the project or activity that is the subject of the extension; and

[''(ii) specify a deadline that provides for a period for completion of the project before the end of the period described in clause (i).

[''(e) AUTHORITY OF SECRETARY.—

[''(1) IN GENERAL.—In carrying out this title, after providing reasonable notice to the Nation, the Secretary, in compliance with all applicable law, may enter, construct works on, and take such other actions as are related to the entry or construction on land within the San Xavier District and the Schuk Toak District.

[''(2) EFFECT ON FEDERAL ACTIVITY.—Nothing in this subsection affects the authority of the United States, or any Federal officer, agent, employee, or contractor, to conduct official Federal business or carry out any Federal duty (including any Federal business or duty under this title) on land within the eastern Schuk Toak District or the San Xavier District.

[''(f) USE OF FUNDS.—

[''(1) IN GENERAL.—With respect to any funds received under subsection (c)(3)(A), the San Xavier District—

[''(A) shall hold the funds in trust, and invest the funds in interest-bearing deposits and securities, until expended;

[''(B) may expend the principal of the funds, and any interest and dividends that accrue on the principal, only in accordance with a budget that is—

[''(i) authorized by the San Xavier District Council; and

[''(ii) approved by resolution of the Legislative Council of the Nation; and

[''(C) shall expend the funds—

[''(i) for any subjugation of land, development of water resources, or construction, operation, maintenance, or replacement of facilities within the San Xavier Reservation that is not required to be carried out by the United States under this title or any other provision of law;

[''(ii) to provide governmental services, including—

[''(I) programs for senior citizens;

[''(II) health care services;

[''(III) education;

[''(IV) economic development loans and assistance; and

[''(V) legal assistance programs;

[''(iii) to provide benefits to allottees;

[''(iv) to pay the costs of activities of the San Xavier Allottees Association; or

[''(v) to pay any administrative costs incurred by the Nation or the San Xavier District in conjunction with any of the activities described in clauses (i) through (iv).

[''(2) NO LIABILITY OF SECRETARY; LIMITATION.—

[''(A) IN GENERAL.—The Secretary shall not—

[''(i) be responsible for any review, approval, or audit of the use and expenditure of the funds described in paragraph (1); or

[''(ii) be subject to liability for any claim or cause of action arising from the use or expenditure, by the Nation or the San Xavier District, of those funds.

[''(B) LIMITATION.—No portion of any funds described in paragraph (1) shall be used for per capita payments to any individual member of the Nation or any allottee.

[''SEC. 305. DELIVERIES UNDER EXISTING CONTRACT; ALTERNATIVE WATER SUPPLIES.

[''(a) DELIVERY OF WATER.—

[''(1) IN GENERAL.—The Secretary shall deliver water from the main project works of the Central Arizona Project, in such quantities, and in accordance with such terms and conditions, as are contained in the agreement of December 11, 1980, the 1982 Act, and the agreement of October 11, 1983, to 1 or more of—

[''(A) the cooperative farm;

[''(B) the eastern Schuk Toak District;

[''(C) turnouts existing on the enforceability date; and

[''(D) any other point of delivery on the Central Arizona Project main aqueduct that is agreed to by—

[''(i) the Secretary;

[''(ii) the operator of the Central Arizona Project; and

[''(iii) the Nation.

[''(2) DELIVERY.—The Secretary shall deliver the water covered by sections 304(a) and 306(a), or an equivalent quantity of water from a source identified under subsection (b)(1), notwithstanding—

[''(A) any declaration by the Secretary of a water shortage on the Colorado River; or

[''(B) any other occurrence affecting water delivery caused by an act or omission of—

[''(i) the Secretary;

[''(ii) the United States; or

[''(iii) any officer, employee, contractor, or agent of the Secretary or United States.

[''(b) ACQUISITION OF LAND AND WATER.—

[''(1) DELIVERY.—

[''(A) IN GENERAL.—Except as provided in subparagraph (B), if the Secretary, under the terms and conditions of the agreements referred to in subsection (a)(1), is unable, during any year, to deliver from the main project works of the Central Arizona Project any portion of the quantity of water covered by sections 304(a) and 306(a), the Secretary shall identify, acquire and deliver an equivalent quantity of water from, any appropriate source.

[''(B) EXCEPTION.—The Secretary shall not acquire any water under subparagraph (A) through any transaction that would cause depletion of groundwater supplies or aquifers in the San Xavier District or the eastern Schuk Toak District.

[''(2) PRIVATE LAND AND INTERESTS.—

[''(A) ACQUISITION.—

[''(i) IN GENERAL.—Subject to subparagraph (B), the Secretary may acquire such private land, or interests in private land, that include rights in surface or groundwater recognized under State law, as are necessary for the acquisition and delivery of water under this subsection.

[''(ii) COMPLIANCE.—In acquiring rights in surface water under clause (i), the Secretary shall comply with all applicable severance and transfer requirements under State law.

[''(B) PROHIBITION ON TAKING.—The Secretary shall not acquire any land, water, water rights, or contract rights under subparagraph (A) without the consent of the owner of the land, water, water rights, or contract rights.

[''(C) PRIORITY.—In acquiring any private land or interest in private land under this paragraph, the Secretary shall give priority to the acquisition of land on which water has been put to beneficial use during any 1-year period during the 5-year period preceding the date of acquisition of the land by the Secretary.

[''(3) DELIVERIES FROM ACQUIRED LAND.—Deliveries of water from land acquired under paragraph (2) shall be made only to the extent that the water may be transported within the Tucson management area under applicable law.

[''(4) DELIVERY OF EFFLUENT.—

[''(A) IN GENERAL.—Except on receipt of prior written consent of the Nation, the Secretary shall not deliver effluent directly to the Nation under this subsection.

[''(B) NO SEPARATE DELIVERY SYSTEM.—The Secretary shall not construct a separate delivery system to deliver effluent to the San Xavier Reservation or the eastern Schuk Toak District.

[''(C) NO IMPOSITION OF OBLIGATION.—Nothing in this paragraph imposes any obligation on the United States to deliver effluent to the Nation.

[''(c) AGREEMENTS AND CONTRACTS.—To facilitate the delivery of water to the San Xavier Reservation and the eastern Schuk Toak District under this title, the Secretary may enter into a contract or agreement with the State, an irrigation district or project, or entity—

[''(1) for—

[''(A) the exchange of water; or

[''(B) the use of aqueducts, canals, conduits, and other facilities (including pumping plants) for water delivery; or

[''(2) to use facilities constructed, in whole or in part, with Federal funds.

[''(d) COMPENSATION AND DISBURSEMENTS.—

[''(1) COMPENSATION.—If the Secretary is unable to acquire and deliver sufficient quantities of water under section 304(a), this section, or section 306(a), the Secretary shall provide compensation in accordance with paragraph (2) in amounts equal to—

[''(A)(i) the value of such quantities of water as are not acquired and delivered, if the delivery and distribution system for, and the improvements to, the irrigation system for the cooperative farm have not been completed by the deadline required under section 304(c)(1); or

[''(ii) the value of such quantities of water as—

[''(I) are ordered by the Nation for use by the Cooperative Association in the irrigation system; but

[''(II) are not delivered in any calendar year;

[''(B)(i) the value of such quantities of water as are not acquired and delivered, if the extension of the irrigation system is not completed by the deadline required under section 304(c)(2); or

[''(ii) the value of such quantities of water as—

[''(I) are ordered by the Nation for use by the Cooperative Association in the extension to the irrigation system; but

[''(II) are not delivered in any calendar year; and

[''(C)(i) the value of such quantities of water as are not acquired and delivered, if the irrigation system is not completed by the deadline required under section 304(c)(4); or

[''(ii) except as provided in clause (i), the value of such quantities of water as—

[''(I) are ordered by the Nation for use in the irrigation system, or for use by any person or entity (other than the Cooperative Association); but

[''(II) are not delivered in any calendar year.

[''(2) DISBURSEMENT.—Any compensation payable under paragraph (1) shall be disbursed—

[''(A) with respect to compensation payable under subparagraphs (A) and (B) of paragraph (1), to the Cooperative Association; and

[''(B) with respect to compensation payable under paragraph (1)(C), to the Nation for retention by the Nation or disbursement to water users, under the provisions of the water code or other applicable laws of the Nation.

[''(e) NO EFFECT ON WATER RIGHTS.—Nothing in this section authorizes the Secretary to acquire or otherwise affect the water rights of any Indian tribe.

["SEC. 306. ADDITIONAL WATER DELIVERY.

[''(a) IN GENERAL.—In addition to the delivery of water described in section 304(a), the Secretary shall deliver from the main project works of the Central Arizona Project, a total of 28,200 acre-feet of NIA priority water suitable for agricultural use, of which—

[''(1) 23,000 acre-feet shall—

[''(A) be delivered to, and used by, the San Xavier Reservation; or

[''(B) otherwise be used by the Nation in accordance with section 309; and

[''(2) 5,200 acre-feet shall—

[''(A) be delivered to, and used by, the eastern Schuk Toak District; or

[''(B) otherwise be used by the Nation in accordance with section 309.

[''(b) STATE CONTRIBUTION.—To assist the Secretary in firming water under section 105(b)(1)(A) of the Arizona Water Settlements Act, the State shall contribute $3,000,000—

[''(1) in accordance with a schedule that is acceptable to the Secretary and the State; and

[''(2) in the form of cash or in-kind goods and services.

["SEC. 307. CONDITIONS ON CONSTRUCTION, WATER DELIVERY, REVENUE SHARING.

[''(a) CONDITIONS ON ACTIONS OF SECRETARY.—The Secretary shall carry out section 304(c), subsections (a), (b), and (d) of section 305, and section 306, only if—

[''(1) the Nation agrees—

[''(A) except as provided in section 308(f)(1), to limit the quantity of groundwater withdrawn by nonexempt wells from beneath the San Xavier Reservation to not more than 10,000 acre-feet;

[''(B) except as provided in section 308(f)(2), to limit the quantity of groundwater withdrawn by nonexempt wells from beneath the eastern Schuk Toak District to not more than 3,200 acre-feet;

[''(C) to comply with water management plans established by the Secretary under section 308(d);

[''(D) to consent to the San Xavier District being deemed a tribal organization (as defined in section 900.6 of title 25, Code of Federal Regulations (or any successor regulations)) for purposes identified in subparagraph (E)(iii)(I), as permitted with respect to tribal organizations under title I of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.);

[''(E) subject to compliance by the Nation with other applicable provisions of part 900 of title 25, Code of Federal Regulations (or any successor regulations), to consent to contracting by the San Xavier District under section 311(b), on the conditions that—

[''(i)(I) the plaintiffs in the Adams case, Alvarez case, and Tucson case have stipulated to the dismissal, with prejudice, of claims in those cases; and

[''(II) those cases have been dismissed with prejudice;

[''(ii) the San Xavier Cooperative Association has agreed to assume responsibility, after completion of each of the irrigation systems described in paragraphs (1), (2), and (3) of section 304(c) and on the delivery of water to those systems, for the operation, maintenance, and replacement of those systems in accordance with the first section of the Act of August 1, 1914 (25 U.S.C. 385); and

[''(iii) with respect to the consent of the Nation to contracting—

[''(I) the consent is limited solely to contracts for—

[''(aa) the design and construction of the delivery and distribution system and the rehabilitation of the irrigation system for the cooperative farm;

[''(bb) the extension of the irrigation system for the cooperative farm;

[''(cc) the subjugation of land to be served by the extension of the irrigation system;

[''(dd) the design and construction of storage facilities solely for water deliverable for use within the San Xavier Reservation; and

[''(ee) the completion by the Secretary of a water resources study of the San Xavier Reservation and subsequent preparation of a water management plan under section 308(d);

[''(II) the Nation shall reserve the right to seek retrocession or reassumption of contracts described in subclause (I), and recontracting under subpart P and other applicable provisions of part 900 of title 25, Code of Federal Regulations (or any successor regulations);

[''(III) the Nation, on granting consent to such contracting, shall be released from any responsibility, liability, claim, or cost from and after the date on which consent is given, with respect to past action or inaction by the Nation, and subsequent action or inaction by the San Xavier District, relating to the design and construction of irrigation systems for the cooperative farm or the Central Arizona Project link pipeline; and

[''(IV) the Secretary shall, on the request of the Nation, execute a waiver and release to carry out subclause (III);

[''(F) to subjugate, at no cost to the United States, the land for which the irrigation systems under paragraphs (2) and (3) of section 304(c) will be planned, designed, and constructed by the Secretary, on the condition that—

[''(i) the obligation of the Nation to subjugate the land in the cooperative farm that is to be served by the extension of the irrigation system under section 304(c)(2) shall be determined by the Secretary, in consultation with the Nation and the San Xavier Cooperative Association; and

[''(ii) subject to approval by the Secretary of a contract with the San Xavier District executed under section 311, to perform that subjugation, a determination by the Secretary of the subjugation costs under clause (i), and the provision of notice by the San Xavier District to the Nation at least 180 days before the date on which the District Council certifies by resolution that the subjugation is scheduled to commence, the Nation pays to the San Xavier District, not later than 90 days before the date on which the subjugation is scheduled to commence, from the trust fund under section 315, or from other sources of funds held by the Nation, the amount determined by the Secretary under clause (i); and

[''(G) subject to valid existing rights, section 7 of the Act of February 8, 1887 (25 U.S.C. 381), this title, other applicable Federal law, a water management plan developed under section 308(d), and the water code and other applicable laws of the Nation, that the Nation—

[''(i) shall allocate as a first right of beneficial use by allottees, the San Xavier District, and other persons within the San Xavier Reservation—

[''(I) 35,000 acre-feet of the 50,000 acre-feet of water deliverable under sections 304(a)(1) and 306(a)(1), including the use of the allocation—

[''(aa) to fulfill the obligations prescribed in the Asarco agreement; and

[''(bb) for groundwater storage, maintenance of instream flows, and maintenance of riparian vegetation and habitat;

[''(II) the 10,000 acre-feet of groundwater identified in subsection (a)(1)(A);

[''(III) the groundwater withdrawn from exempt wells;

[''(IV) the deferred pumping storage credits authorized by section 308(f)(1)(B); and

[''(V) the storage credits resulting from a project authorized in section 308(e) that cannot be lawfully transferred or otherwise disposed of to persons for recovery outside the Nation's Reservation; and

[''(ii) subject to section 309(b)(2), has the right—

[''(I) to use, or authorize other persons or entities to use, any portion of the allocation of 35,000 acre-feet of water deliverable under sections 304(a)(1) and 306(a)(1) outside the San Xavier Reservation for any period during which there is no identified actual use of the water within the San Xavier Reservation;

[''(II) as a first right of use, to use the remaining acre-feet of water deliverable under sections 304(a)(1) and 306(a)(1) for any purpose and duration authorized by this title within or outside the Nation's Reservation; and

[''(III) subject to section 308(e), as an exclusive right, to transfer or otherwise dispose of the storage credits that may be lawfully transferred or otherwise disposed of to

persons for recovery outside the Nation's Reservation;

[''(iii) shall issue permits to persons or entities for use of the water resources referred to in clause (i);

[''(iv) shall, on timely receipt of an order for water by a permittee under a permit for Central Arizona Project water referred to in clause (i), submit the order to—

[''(I) the Secretary; or

[''(II) the operating agency for the Central Arizona Project;

[''(v) shall issue permits for water deliverable under sections 304(a)(2) and 306(a)(2), including quantities of water reasonably necessary for the irrigation system referred to in section 304(c)(3);

[''(vi) shall issue permits for groundwater that may be withdrawn from nonexempt wells in the eastern Schuk Toak District; and

[''(vii) shall, on timely receipt of an order for water by a permittee under a permit for water referred to in clause (v), submit the order to—

[''(I) the Secretary; or

[''(II) the operating agency for the Central Arizona Project; and

[''(2) the Adams case, Alvarez case, and Tucson case have been dismissed with prejudice.

[''(b) RESPONSIBILITIES ON COMPLETION.—On completion of an irrigation system or extension of an irrigation system described in paragraph (1) or (2) of section 304(c), or in the case of the irrigation system described in section 304(c)(3), if such irrigation system is constructed on individual Indian trust allotments, neither the United States nor the Nation shall be responsible for the operation, maintenance, or replacement of the system.

[''(c) PAYMENT OF CHARGES.—The Nation shall not be responsible for payment of any water service capital charge for Central Arizona Project water delivered under section 304, subsection (a) or (b) of section 305, or section 306.

[''SEC. 308. WATER CODE; WATER MANAGEMENT PLAN; STORAGE PROJECTS; STORAGE ACCOUNTS; GROUNDWATER.

[''(a) WATER RESOURCES.—Water resources described in clauses (i) and (ii) of section 307(a)(1)(G)—

[''(1) shall be subject to section 7 of the Act of February 8, 1887 (25 U.S.C. 381); and

[''(2) shall be apportioned pursuant to clauses (i) and (ii) of section 307(a)(1)(G).

[''(b) WATER CODE.—Subject to this title and any other applicable law, the Nation shall—

[''(1) manage, regulate, and control the water resources of the Nation and the water resources granted or confirmed under this title;

[''(2) establish conditions, limitations, and permit requirements, and promulgate regulations, relating to the storage, recovery, and use of surface water and groundwater within the Nation's Reservation; and

[''(3) enact and maintain—

[''(A) as soon as practicable after the enforceability date, an interim allottee water rights code that—

[''(i) is consistent with subsection (a);

[''(ii) prescribes the rights of allottees identified in paragraph (4); and

[''(iii) provides that the interim allottee water rights code shall be incorporated in the comprehensive water code referred to in subparagraph (B); and

[''(B) not later than 3 years after the enforceability date, a comprehensive water code applicable to the water resources granted or confirmed under this title;

[''(4) include in each of the water codes enacted under subparagraphs (A) and (B) of paragraph (3)—

[''(A) an acknowledgement of the rights described in subsection (a);

[''(B) a process by which a just and equitable distribution of the water resources referred to in subsection (a), and any compensation provided under section 305(d), shall be provided to allottees;

[''(C) a process by which an allottee may request and receive a permit for the use of any water resources referred to in subsection (a), except the water resources referred to in section 307(a)(1)(G)(ii)(III) and subject to the Nation's first right of use under section 307(a)(1)(G)(ii)(II);

[''(D) provisions for the protection of due process with respect to members of the Nation and allottees, including—

[''(i) a fair procedure for consideration and determination of any request by—

[''(I) a member of the Nation, for a permit for use of available water resources granted or confirmed by this title; and

[''(II) an allottee, for a permit for use of—

[''(aa) the water resources identified in section 307(a)(1)(G)(i) that are subject to a first right of beneficial use; or

[''(bb) subject to the first right of use of the Nation, available water resources identified in section 307(a)(1)(G)(i)(II);

[''(ii) provisions for—

[''(I) appeals and adjudications of denied or disputed permits; and

[''(II) resolution of contested administrative decisions; and

[''(iii) a waiver by the Nation of the sovereign immunity of the Nation only with respect to proceedings described in clause (ii) for claims of declaratory and injunctive relief; and

[''(E) a process for satisfying any entitlement to the water resources referred to in section 307(a)(1)(G)(i) for which fee owners of allotted land have received final determinations under applicable law; and

[''(5) submit to the Secretary the comprehensive water code, for approval by the Secretary only of the provisions of the water code (and any amendments to the water code), that implement, with respect to the allottees, the standards described in paragraph (4).

[''(c) WATER CODE APPROVAL.—

[''(1) IN GENERAL.—On receipt of a comprehensive water code under subsection (b)(5), the Secretary shall—

[''(A) issue a written approval of the water code; or

[''(B) provide a written notification to the Nation that—

[''(i) identifies such provisions of the water code that do not conform to subsection (b); and

[''(ii) recommends specific corrective language for each nonconforming provision.

[''(2) REVISION BY NATION.—If the Secretary identifies nonconforming provisions in the water code under paragraph (1)(B)(i), the Nation shall revise the water code in accordance with the recommendations of the Secretary under paragraph (1)(B)(ii).

[''(3) INTERIM AUTHORITY.—Until such time as the Nation revises the water code of the Nation in accordance with paragraph (2) and the Secretary subsequently approves the water code, the Secretary may exercise any lawful authority of the Secretary under section 7 of the Act of February 8, 1887 (25 U.S.C. 381).

[''(4) LIMITATION.—Except as provided in this subsection, nothing in this title requires the approval of the Secretary of the water code of the Nation (or any amendment to that water code).

[''(d) WATER MANAGEMENT PLANS.—

[''(1) IN GENERAL.—The Secretary shall establish, for the San Xavier Reservation and the eastern Schuk Toak District, water management plans that meet the requirements described in paragraph (2).

[''(2) REQUIREMENTS.—Water management plans established under paragraph (1)—

[''(A) shall be developed under contracts executed under section 311 between the Secretary and the San Xavier District for the San Xavier Reservation, and between the Secretary and the Nation for the eastern Schuk Toak District, as applicable, that permit expenditures, exclusive of administrative expenses of the Secretary, of not more than—

[''(i) with respect to a contract between the Secretary and the San Xavier District, $891,200; and

[''(ii) with respect to a contract between the Secretary and the Nation, $237,200;

[''(B) shall, at a minimum—

[''(i) provide for the measurement of all groundwater withdrawals, including withdrawals from each well that is not an exempt well;

[''(ii) provide for—

[''(I) reasonable recordkeeping of water use, including the quantities of water stored underground and recovered each calendar year; and

[''(II) a system for the reporting of withdrawals from each well that is not an exempt well;

[''(iii) provide for the direct storage and deferred storage of water, including the implementation of underground storage and recovery projects, in accordance with this section;

[''(iv) provide for the annual exchange of information collected under clauses (i) through (iii)—

[''(I) between the Nation and the Arizona Department of Water Resources; and

[''(II) between the Nation and the city of Tucson, Arizona;

[''(v) provide for—

[''(I) the efficient use of water; and

[''(II) the prevention of waste;

[''(vi) except on approval of the district council for a district in which a direct storage project is established under subsection (e), provide that no direct storage credits earned as a result of the project shall be recovered at any location at which the recovery would adversely affect surface or groundwater supplies, or lower the water table at any location, within the district; and

[''(vii) provide for amendments to the water plan in accordance with this title;

[''(C) shall authorize the establishment and maintenance of 1 or more underground storage and recovery projects in accordance with subsection (e), as applicable, within—

[''(i) the San Xavier Reservation; or

[''(ii) the eastern Schuk Toak District; and

[''(D) shall be implemented and maintained by the Nation, with no obligation by the Secretary.

[''(e) UNDERGROUND STORAGE AND RECOVERY PROJECTS.—The Nation is authorized to establish direct storage and recovery projects in accordance with the Tohono O'odham settlement agreement.

[''(f) GROUNDWATER.—

[''(1) SAN XAVIER RESERVATION.—

[''(A) IN GENERAL.—In accordance with section 307(a)(1)(A), 10,000 acre-feet of groundwater may be pumped annually within the San Xavier Reservation.

[''(B) DEFERRED PUMPING.—

[''(i) IN GENERAL.—Subject to clause (ii), all or any portion of the 10,000 acre-feet of water not pumped under subparagraph (A) in a year—

[''(I) may be withdrawn in a subsequent year; and

[''(II) if any of that water is withdrawn, shall be accounted for in accordance with the Tohono O'odham settlement agreement as a debit to the deferred pumping storage account.

[''(ii) LIMITATION.—The quantity of water authorized to be recovered as deferred pumping storage credits under this subparagraph shall not exceed—

[''(I) 50,000 acre-feet for any 10-year period; or

[''(II) 10,000 acre-feet in any year.

[''(C) RECOVERY OF ADDITIONAL WATER.—In addition to the quantity of groundwater authorized to be pumped under subparagraphs (A) and (B), the Nation may annually recover within the San Xavier Reservation all or a portion of the credits for water stored under a project described in subsection (e).

[''(2) EASTERN SCHUK TOAK DISTRICT.—

[''(A) IN GENERAL.—In accordance with section 307(a)(1)(B), 3,200 acre-feet of groundwater may be pumped annually within the eastern Schuk Toak District.

[''(B) DEFERRED PUMPING.—

[''(i) IN GENERAL.—Subject to clause (ii), all or any portion of the 3,200 acre-feet of water not pumped under subparagraph (A) in a year—

[''(I) may be withdrawn in a subsequent year; and

[''(II) if any of that water is withdrawn, shall be accounted for in accordance with the Tohono O'odham settlement agreement as a debit to the deferred pumping storage account.

[''(ii) LIMITATION.—The quantity of water authorized to be recovered as deferred pumping storage credits under this subparagraph shall not exceed—

[''(I) 16,000 acre-feet for any 10-year period; or

[''(II) 3,200 acre-feet in any year.

[''(C) RECOVERY OF ADDITIONAL WATER.—In addition to the quantity of groundwater authorized to be pumped under subparagraphs (A) and (B), the Nation may annually recover within the eastern Schuk Toak District all or a portion of the credits for water stored under a project described in subsection (e).

[''(3) INABILITY TO RECOVER GROUNDWATER.—

[''(A) IN GENERAL.—The authorizations to pump groundwater in paragraphs (1) and (2) neither warrant nor guarantee that the groundwater—

[''(i) physically exists; or

[''(ii) is recoverable.

[''(B) CLAIMS.—With respect to groundwater described in subparagraph (A)—

[''(i) subject to paragraph 8.8 of the Tohono O'odham settlement agreement, the inability of any person to pump or recover that groundwater shall not be the basis for any claim by the United States or the Nation against any person or entity withdrawing or using the water from any common supply; and

[''(ii) the United States and the Nation shall be barred from asserting any and all claims for reserved water rights with respect to that groundwater.

[''(g) EXEMPT WELLS.—Any groundwater pumped from an exempt well located within the San Xavier Reservation or the eastern Schuk Toak District shall be exempt from all pumping limitations under this title.

[''(h) INABILITY OF SECRETARY TO DELIVER WATER.—The Nation is authorized to pump additional groundwater in any year in which the Secretary is unable to deliver water required to carry out sections 304(a) and 306(a) in accordance with the Tohono O'odham settlement agreement.

[''(i) PAYMENT OF COMPENSATION.—Nothing in this section affects any obligation of the Secretary to pay compensation in accordance with section 305(d).

[''SEC. 309. USES OF WATER.

[''(a) PERMISSIBLE USES.—Subject to other provisions of this section and other applicable law, the Nation may devote all water supplies granted or confirmed under this title, whether delivered by the Secretary or pumped by the Nation, to any use (including any agricultural, municipal, domestic, industrial, commercial, mining, underground storage, instream flow, riparian habitat maintenance, or recreational use).

[''(b) USE AREA.—

[''(1) USE WITHIN NATION'S RESERVATION.—Subject to subsection (d), the Nation may use at any location within the Nation's Reservation—

[''(A) the water supplies acquired under sections 304(a) and 306(a);

[''(B) groundwater supplies; and

[''(C) storage credits acquired as a result of projects authorized under section 308(e), or deferred storage credits described in section 308(f), except to the extent that use of those storage credits causes the withdrawal of groundwater in violation of applicable Federal law.

[''(2) USE OUTSIDE THE NATION'S RESERVATION.—

[''(A) IN GENERAL.—Water resources granted or confirmed under this title may be sold, leased, transferred, or used by the Nation outside of the Nation's Reservation only in accordance with this title.

[''(B) USE WITHIN CERTAIN AREA.—Subject to subsection (c), the Nation may use the Central Arizona Project water supplies acquired under sections 304(a) and 306(a) within the Central Arizona Project service area.

[''(C) STATE LAW.—With the exception of Central Arizona Project water and groundwater withdrawals under the Asarco agreement, the Nation may sell, lease, transfer, or use any water supplies and storage credits acquired as a result of a project authorized under section 308(e) at any location outside of the Nation's Reservation, but within the State, only in accordance with State law.

[''(D) LIMITATION.—Deferred pumping storage credits provided for in section 308(f) shall not be sold, leased, transferred, or used outside the Nation's Reservation.

[''(E) PROHIBITION ON USE OUTSIDE THE STATE.—No water acquired under section 304(a) or 306(a) shall be leased, exchanged, forborne, or otherwise transferred by the Nation for any direct or indirect use outside the State.

[''(c) EXCHANGES AND LEASES; CONDITIONS ON EXCHANGES AND LEASES; RIGHT OF FIRST REFUSAL.—

[''(1) IN GENERAL.—With respect to users outside the Nation's Reservation, the Nation may, for a term of not to exceed 100 years, assign, exchange, lease, provide an option to lease, or otherwise temporarily dispose of to the users, Central Arizona Project water to which the Nation is entitled under sections 304(a) and 306(a) or storage credits acquired under section 308(e), if the assignment, exchange, lease, option, or temporary disposal is carried out in accordance with—

[''(A) this subsection; and

[''(B) subsection (b)(2).

[''(2) LIMITATION ON ALIENATION.—The Nation shall not permanently alienate any water right under paragraph (1).

[''(3) AUTHORIZED USES.—The water described in paragraph (1) shall be delivered within the Central Arizona Project service area for any use authorized under applicable law.

[''(4) CONTRACT.—An assignment, exchange, lease, option, or temporary disposal described in paragraph (1) shall be executed only in accordance with a contract that—

[''(A) is accepted by the Nation;

[''(B) is ratified under a resolution of the Legislative Council of the Nation;

[''(C) is approved by the United States as Trustee; and

[''(D) with respect to any contract to which the United States or the Secretary is a party, provides that an action may be maintained by the contracting party against the United States and the Secretary for a breach of the contract by the United States or Secretary, as appropriate.

[''(5) TERMS EXCEEDING 25 YEARS.—The terms and conditions established in paragraph 11 of the Tohono O'odham settlement agreement shall apply to any contract under paragraph (4) that has a term of greater than 25 years.

[''(d) LIMITATIONS ON USE, EXCHANGES, AND LEASES.—The rights of the Nation to use water supplies under subsection (a), and to assign, exchange, lease, provide options to lease, or temporarily dispose of the water supplies under subsection (c), shall be exercised on conditions that ensure, to the maximum extent practicable, the availability of water supplies to satisfy the first right of beneficial use under section 307(a)(1)(G)(i).

[''(e) WATER SERVICE CAPITAL CHARGES.—In any transaction entered into by the Nation and another person under subsection (c) with respect to Central Arizona Project water of the Nation, the person shall not be obligated to pay to the United States or the Central Arizona Water Conservation District any water service capital charge.

[''(f) WATER RIGHTS UNAFFECTED BY USE OR NONUSE.—The failure of the Nation to make use of water provided under this title, or the use of, or failure to make use of, that water by any other person that enters into a contract with the Nation under subsection (c) for the assignment, exchange, lease, option for lease, or temporary disposal of water, shall not diminish, reduce, or impair—

[''(1) any water right of the Nation, as established under this title or any other applicable law; or

[''(2) any water use right recognized under this title, including—

[''(A) the first right of beneficial use referred to in section 307(a)(1)(G)(i); or

[''(B) the allottee use rights referred to in section 308(a).

[''(g) AMENDMENT TO AGREEMENT OF DECEMBER 11, 1980.—The Secretary shall amend the agreement of December 11, 1980 to provide that—

[''(1) the contract shall be—

[''(A) for permanent service (within the meaning of section 5 of the Boulder Canyon Project Act of 1928 (43 U.S.C. 617d)); and

[''(B) without limit as to term;

[''(2) the Nation may, with the approval of the Secretary—

[''(A) in accordance with subsection (c), assign, exchange, lease, enter into an option to lease, or otherwise temporarily dispose of water to which the Nation is entitled under sections 304(a) and 306(a); and

[''(B) renegotiate any lease at any time during the term of the lease if the term of the renegotiated lease does not exceed 100 years;

[''(3)(A) the Nation shall be entitled to all consideration due to the Nation under any leases and any options to lease or exchanges or options to exchange the Nation's Central Arizona Project water entered into by the Nation; and

[''(B) the United States shall have no trust obligation or other obligation to monitor, administer, or account for any consideration received by the Nation under those leases or options to lease and exchanges or options to exchange;

[''(4)(A) all of the Nation's Central Arizona Project water shall be delivered through the Central Arizona Project aqueduct; and

[''(B) if the delivery capacity of the Central Arizona Project aqueduct is significantly reduced or is anticipated to be significantly reduced for an extended period of time, the Nation shall have the same Central Arizona Project delivery rights as other Central Arizona Project contractors and Central

Arizona Project subcontractors, if the Central Arizona Project contractors or Central Arizona Project subcontractors are allowed to take delivery of water other than through the Central Arizona Project aqueduct;

[''(5) the Nation may use the Nation's Central Arizona Project water on or off of the Nation's Reservation for the purposes of the Nation consistent with this title;

[''(6) as authorized by subparagraph (A) of section 403(f)(2) of the Colorado River Basin Project Act (43 U.S.C. 1543(f)(2)) (as amended by section 107(a)) and to the extent that funds are available in the Lower Colorado River Basin Development Fund established by section 403 of that Act (43 U.S.C. 1543), the United States shall pay to the Central Arizona Project operating agency the fixed operation, maintenance, and replacement charges associated with the delivery of the Nation's Central Arizona Project water, except for the Nation's Central Arizona Project water leased by others;

[''(7) the costs associated with the construction of the delivery and distribution system—

[''(A) shall be nonreimbursable; and

[''(B) shall be excluded from any repayment obligation of the Nation;

[''(8) no water service capital charges shall be due or payable for the Nation's Central Arizona Project water, regardless of whether the Central Arizona Project water is delivered for use by the Nation or is delivered pursuant to any leases or options to lease or exchanges or options to exchange the Nation's Central Arizona Project water entered into by the Nation;

[''(9) the agreement of December 11, 1980, conforms with section 104(d) and section 306(a) of the Arizona Water Settlements Act; and

[''(10) the amendments required by this subsection shall not apply to the 8,000 acre feet of Central Arizona Project water contracted by the Nation in the agreement of December 11, 1980 for the Sif Oidak District.

[''(h) RATIFICATION OF AGREEMENTS.—

[''(1) IN GENERAL.—Notwithstanding any other provision of law, each of the agreements described in paragraph (2)—

[''(A) is authorized, ratified, and confirmed; and

[''(B) shall be executed by the Secretary.

[''(2) AGREEMENTS.—The agreements described in this paragraph are—

[''(A) the Tohono O'odham settlement agreement, to the extent that—

[''(i) the Tohono O'odham settlement agreement is consistent with this title; and

[''(ii) parties to the Tohono O'odham settlement agreement other than the Secretary have executed that agreement;

[''(B) the Tucson agreement (attached to the Tohono O'odham settlement agreement as exhibit 12.1); and

[''(C)(i) the Asarco agreement (attached to the Tohono O'odham settlement agreement as exhibit 13.1 to the Tohono O'odham settlement agreement);

[''(ii) lease No. H54–16–72, dated April 26, 1972, and approved by the United States on November 14, 1972; and

[''(iii) any new well site lease as provided for in the Asarco agreement; and

[''(D) the FICO agreement (attached to the Tohono O'odham settlement agreement as Exhibit 14.1).

[''(3) RELATION TO OTHER LAW.—

[''(A) IN GENERAL.—Execution of an agreement described in paragraph (2) shall not constitute major Federal action under the National Environmental Policy Act (42 U.S.C. 4321 et seq.).

[''(B) ENVIRONMENTAL COMPLIANCE ACTIVITIES.—The Secretary shall carry out all necessary environmental compliance activities during the implementation of the agreements described in paragraph (2), including activities under—

[''(i) the National Environmental Policy Act (42 U.S.C. 4321 et seq.); and

[''(ii) the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.).

[''(C) LEAD AGENCY.—The Bureau of Reclamation shall be the lead agency with respect to environmental compliance under the agreements described in paragraph (2).

[''(i) DISBURSEMENTS FROM TUCSON INTERIM WATER LEASE.—The Secretary shall disburse to the Nation, without condition, all proceeds from the Tucson interim water lease.

[''(j) USE OF GROSS PROCEEDS.—

[''(1) DEFINITION OF GROSS PROCEEDS.—In this subsection, the term 'gross proceeds' means all proceeds, without reduction, received by the Nation from—

[''(A) the Tucson interim water lease;

[''(B) the Asarco agreement; and

[''(C) any agreement similar to the Asarco agreement to store Central Arizona Project water of the Nation, instead of pumping groundwater, for the purpose of protecting water of the Nation.

[''(2) ENTITLEMENT.—The Nation shall be entitled to receive all gross proceeds.

[''(k) STATUTORY CONSTRUCTION.—Nothing in this title establishes whether reserved water may be put to use, or sold for use, off any reservation to which reserved water rights attach.

[''SEC. 310. COOPERATIVE FUND.

[''(a) REAUTHORIZATION.—

[''(1) IN GENERAL.—Congress reauthorizes, for use in carrying out this title, the cooperative fund established in the Treasury of the United States by section 313 of the 1982 Act.

[''(2) AMOUNTS IN COOPERATIVE FUND.—The cooperative fund shall consist of—

[''(A)(i) $5,250,000, as appropriated to the cooperative fund under section 313(b)(3)(A) of the 1982 Act; and

[''(ii) such amount, not to exceed $32,000,000, as the Secretary determines, after providing notice to Congress, is necessary to carry out this title;

[''(B) any additional Federal funds deposited to the cooperative fund under Federal law;

[''(C) $5,250,000, as deposited in the cooperative fund under section 313(b)(1)(B) of the 1982 Act, of which—

[''(i) $2,750,000 was contributed by the State;

[''(ii) $1,500,000 was contributed by the city of Tucson; and

[''(iii) $1,000,000 was contributed by—

[''(I) the Anamax Mining Company;

[''(II) the Cyprus-Pima Mining Company;

[''(III) the American Smelting and Refining Company;

[''(IV) the Duval Corporation; and

[''(V) the Farmers Investment Company;

[''(D) all interest accrued on all amounts in the cooperative fund beginning on October 12, 1982, less any interest expended under subsection (b)(2); and

[''(E) all revenues received from—

[''(i) the sale or lease of effluent received by the Secretary under the contract between the United States and the city of Tucson to provide for delivery of reclaimed water to the Secretary, dated October 11, 1983; and

[''(ii) the sale or lease of storage credits derived from the storage of that effluent.

[''(b) EXPENDITURES FROM FUND.—

[''(1) IN GENERAL.—Subject to paragraph (2), upon request by the Secretary, the Secretary of the Treasury shall transfer from the cooperative fund to the Secretary such amounts as the Secretary determines are necessary to carry out obligations of the Secretary under this title, including to pay—

[''(A) the variable costs relating to the delivery of water under sections 304 through 306;

[''(B) fixed operation maintenance and replacement costs relating to the delivery of water under sections 304 through 306, to the extent that funds are not available from the Lower Colorado River Basin Development Fund to pay those costs;

[''(C) the costs of acquisition and delivery of water from alternative sources under section 305; and

[''(D) any compensation provided by the Secretary under section 305(e).

[''(2) EXPENDITURE OF INTEREST.—With respect to interest income accruing from amounts in the cooperative fund—

[''(A) except as provided in paragraph (3), the Secretary of the Interior may expend only interest income accruing after the effective date; and

[''(B) that interest income may be expended by the Secretary of the Interior, without further appropriation.

[''(3) EXPENDITURE OF REVENUES.—Revenues described in subpargraph (a)(2)(E) shall be available for expenditure under paragraph (1).

[''(c) INVESTMENT OF AMOUNTS.—

[''(1) IN GENERAL.—The Secretary of the Treasury shall invest such portion of the cooperative fund as is not, in the judgment of the Secretary of the Treasury, required to meet current withdrawals determined by the Secretary. Investments may be made only in interest-bearing obligations of the United States.

[''(2) CREDITS TO COOPERATIVE FUND.—The interest on, and the proceeds from the sale or redemption of, any obligations held in the cooperative fund shall be credited to and form a part of the cooperative fund.

[''(d) TRANSFERS OF AMOUNTS.—

[''(1) IN GENERAL.—The amounts required to be transferred to the cooperative fund under this section shall be transferred at least monthly from the general fund of the Treasury to the cooperative fund on the basis of estimates made by the Secretary of the Treasury.

[''(2) ADJUSTMENTS.—Proper adjustment shall be made in amounts subsequently transferred to the extent prior estimates were in excess of or less than the amounts required to be transferred.

[''SEC. 311. CONTRACTING AUTHORITY; WATER QUALITY; STUDIES; ARID LAND ASSISTANCE.

[''(a) FUNCTIONS OF SECRETARY.—Except as provided in subsection (f), the functions of the Secretary (or the Commissioner of Reclamation, acting on behalf of the Secretary) under this title shall be subject to the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.) to the same extent as if those functions were carried out by the Assistant Secretary for Indian Affairs.

[''(b) SAN XAVIER DISTRICT AS CONTRACTOR.—

[''(1) IN GENERAL.—Subject to the consent of the Nation and other requirements under section 307(a)(1)(E), the San Xavier District shall be considered to be an eligible contractor for purposes of this title.

[''(2) TECHNICAL ASSISTANCE.—The Secretary shall provide to the San Xavier District technical assistance in carrying out the contracting requirements under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.).

[''(c) GROUNDWATER MONITORING PROGRAMS.—

[''(1) SAN XAVIER INDIAN RESERVATION PROGRAM.—

[''(A) IN GENERAL.—Not later than 180 days after the enforceability date, the Secretary shall design and carry out a comprehensive groundwater monitoring program (including the drilling of wells and other appropriate actions) to test, assess, and provide for the

long-term monitoring of the quality of groundwater withdrawn from exempt wells and other wells within the San Xavier Reservation.

[''(B) LIMITATION ON EXPENDITURES.—In carrying out this paragraph, the Secretary shall expend not more than $215,000.

[''(2) EASTERN SCHUK TOAK DISTRICT PROGRAM.—

[''(A) IN GENERAL.—Not later than 180 days after the enforceability date, the Secretary shall design and carry out a comprehensive groundwater monitoring program (including the drilling of wells and other appropriate actions) to test, assess, and provide for the long-term monitoring of the quality of groundwater withdrawn from exempt wells and other wells within the eastern Schuk Toak District.

[''(B) LIMITATION ON EXPENDITURES.—In carrying out this paragraph, the Secretary shall expend not more than $175,000.

[''(3) DUTIES OF SECRETARY.—

[''(A) CONSULTATION.—In carrying out paragraphs (1) and (2), the Secretary shall consult with representatives of—

[''(i) the Nation;

[''(ii) the San Xavier District and Schuk Toak District, respectively; and

[''(iii) appropriate State and local entities.

[''(B) LIMITATION ON OBLIGATIONS OF SECRETARY.—With respect to the groundwater monitoring programs described in paragraphs (1) and (2), the Secretary shall have no continuing obligation relating to those programs beyond the obligations described in those paragraphs.

[''(d) WATER RESOURCES STUDY.—To assist the Nation in developing sources of water, the Secretary shall conduct a study to determine the availability and suitability of water resources that are located—

[''(1) within the Nation's Reservation; but

[''(2) outside the Tucson management area.

[''(e) ARID LAND RENEWABLE RESOURCES.—If a Federal entity is established to provide financial assistance to carry out arid land renewable resources projects and to encourage and ensure investment in the development of domestic sources of arid land renewable resources, the entity shall—

[''(1) give first priority to the needs of the Nation in providing that assistance; and

[''(2) make available to the Nation, San Xavier District, Schuk Toak District, and San Xavier Cooperative Association price guarantees, loans, loan guarantees, purchase agreements, and joint venture projects at a level that the entity determines will—

[''(A) facilitate the cultivation of such minimum number of acres as is determined by the entity to be necessary to ensure economically successful cultivation of arid land crops; and

[''(B) contribute significantly to the economy of the Nation.

[''(f) ASARCO LAND EXCHANGE STUDY.—

[''(1) IN GENERAL.—Not later than 2 years after the enforceability date, the Secretary, in consultation with the Nation, the San Xavier District, the San Xavier Allottees' Association, and Asarco, shall conduct and submit to Congress a study on the feasibility of a land exchange or land exchanges with Asarco to provide land for future use by—

[''(A) beneficial landowners of the Mission Complex Mining Leases of September 18, 1959; and

[''(B) beneficial landowners of the Mission Complex Business Leases of May 12, 1959.

[''(2) COMPONENTS.—The study under paragraph (1) shall include—

[''(A) an analysis of the manner in which land exchanges could be accomplished to maintain a contiguous land base for the San Xavier Reservation; and

[''(B) a description of the legal status exchanged land should have to maintain the political integrity of the San Xavier Reservation.

[''(3) LIMITATION ON EXPENDITURES.—In carrying out this paragraph, the Secretary shall expend not more than $250,000.

["SEC. 312. WAIVER AND RELEASE OF CLAIMS.

[''(a) WAIVER OF CLAIMS BY THE NATION.—Except as provided in subsection (d), the Tohono O'odham settlement agreement shall provide that the Nation waives and releases—

[''(1) any and all past, present, and future claims for water rights (including claims based on aboriginal occupancy) arising from time immemorial and, thereafter, forever, and claims for injuries to water rights arising from time immemorial through the enforceability date, for land within the Tucson management area, against—

[''(A) the State (or any agency or political subdivision of the State);

[''(B) any municipal corporation; and

[''(C) any other person or entity;

[''(2) any and all claims for water rights arising from time immemorial and, thereafter, forever, claims for injuries to water rights arising from time immemorial through the enforceability date, and claims for failure to protect, acquire, or develop water rights for land within the San Xavier Reservation and the eastern Schuk Toak District from time immemorial through the enforceability date, against the United States (including any agency, officer, and employee of the United States);

[''(3) any and all claims for injury to water rights arising after the enforceability date for land within the San Xavier Reservation and the eastern Schuk Toak District resulting from the off-Reservation diversion or use of water in a manner not in violation of the Tohono O'odham settlement agreement or State law against—

[''(A) the United States;

[''(B) the State (or any agency or political subdivision of the State);

[''(C) any municipal corporation; and

[''(D) any other person or entity;

[''(4) any and all past, present, and future claims arising out of or relating to the negotiation or execution of the Tohono O'odham settlement agreement or the negotiation or enactment of this title, against—

[''(A) the United States;

[''(B) the State (or any agency or political subdivision of the State);

[''(C) any municipal corporation; and

[''(D) any other person or entity.

[''(b) WAIVER OF CLAIMS BY THE ALLOTTEE CLASSES.—The Tohono O'odham settlement agreement shall provide that each allottee class waives and releases—

[''(1) any and all past, present, and future claims for water rights (including claims based on aboriginal occupancy) arising from time immemorial and, thereafter, forever, claims for injuries to water rights arising from time immemorial through the enforceability date for land within the San Xavier Reservation, against—

[''(A) the State (or any agency or political subdivision of the State);

[''(B) any municipal corporation; and

[''(C) any other person or entity (other than the Nation);

[''(2) any and all claims for water rights arising from time immemorial and, thereafter, forever, claims for injuries to water rights arising from time immemorial through the enforceability date, and claims for failure to protect, acquire, or develop water rights for land within the San Xavier Reservation from time immemorial through the enforceability date, against the United States (including any agency, officer, and employee of the United States);

[''(3) any and all claims for injury to water rights arising after the enforceability date for land within the San Xavier Reservation resulting from the off-Reservation diversion or use of water in a manner not in violation of the Tohono O'odham settlement agreement or State law against—

[''(A) the United States;

[''(B) the State (or any agency or political subdivision of the State);

[''(C) any municipal corporation; and

[''(D) any other person or entity; and

[''(4) any and all past, present, and future claims arising out of or relating to the negotiation or execution of the Tohono O'odham settlement agreement or the negotiation or enactment of this title, against—

[''(A) the United States;

[''(B) the State (or any agency or political subdivision of the State);

[''(C) any municipal corporation; and

[''(D) any other person or entity; and

[''(5) any and all past, present, and future claims for water rights arising from time immemorial and, thereafter, forever, and claims for injuries to water rights arising from time immemorial through the enforceability date, against the Nation (except that under section 307(a)(1)(G) and subsections (a) and (b) of section 308, the allottees and fee owners of allotted land shall retain rights to share in the water resources granted or confirmed under this title and the Tohono O'odham settlement agreement with respect to uses within the San Xavier Reservation).

[''(c) WAIVER OF CLAIMS BY THE UNITED STATES.—Except as provided in subsection (d), the Tohono O'odham settlement agreement shall provide that the United States as Trustee waives and releases—

[''(1) any and all past, present, and future claims for water rights (including claims based on aboriginal occupancy) arising from time immemorial and, thereafter, forever, and claims for injuries to water rights arising from time immemorial through the enforceability date, for land within the Tucson management area or State law against—

[''(A) the Nation;

[''(B) the State (or any agency or political subdivision of the State);

[''(C) any municipal corporation; and

[''(D) any other person or entity;

[''(2) any and all claims for injury to water rights arising after the enforceability date for land within the San Xavier Reservation and the eastern Schuk Toak District resulting from the off-Reservation diversion or use of water in a manner not in violation of the Tohono O'odham settlement agreement or State law against—

[''(A) the Nation;

[''(B) the State (or any agency or political subdivision of the State);

[''(C) any municipal corporation; and

[''(D) any other person or entity;

[''(3) on and after the enforceability date, any and all claims on behalf of the allottees for injuries to water rights against the Nation (except that under section 307(a)(1)(G) and subsections (a) and (b) of section 308, the allottees shall retain rights to share in the water resources granted or confirmed under this title and the Tohono O'odham settlement agreement with respect to uses within the San Xavier Reservation); and

[''(4) contingent on the effectiveness of a waiver of such claims as are provided for in the Asarco agreement, claims against Asarco on behalf of the allottee class for the fourth cause of action in the Alvarez case, as defined in the Tohono O'odham settlement agreement.

[''(d) CLAIMS RELATING TO GROUNDWATER PROTECTION PROGRAM.—The Nation and the United States as Trustee—

[''(1) shall have the right to assert any claims granted by a State law implementing

the groundwater protection program described in paragraph 8.8 of the Tohono O'odham settlement agreement; and

[''(2) if, after the enforceability date, the State law is amended so as to have a material adverse effect on the Nation, shall have a right to relief in the State court having jurisdiction over Gila River adjudication proceedings and decrees, against an owner of any nonexempt well drilled after the effective date of the amendment (if the well actually and substantially interferes with groundwater pumping occurring on the San Xavier Reservation), from the incremental effect of the groundwater pumping that exceeds that which would have been allowable had the State law not been amended.

[''(e) SUPPLEMENTAL WAIVERS OF CLAIMS.—Any party to the Tohono O'odham settlement agreement may waive and release, prohibit the assertion of, or agree not to assert, any claims (including claims for subsidence damage or injury to water quality) in addition to claims for water rights and injuries to water rights on such terms and conditions as may be agreed to by the parties.

[''(f) RIGHTS OF ALLOTTEES; PROHIBITION OF CLAIMS.—

[''(1) IN GENERAL.—As of the enforceability date—

[''(A) the water rights and other benefits granted or confirmed by this title and the Tohono O'odham settlement agreement shall be in full satisfaction of—

[''(i) all claims for water rights and claims for injuries to water rights of the Nation; and

[''(ii) all claims for water rights and injuries to water rights of the allottees;

[''(B) any entitlement to water within the Tucson management area of the Nation, or of any allottee, shall be satisfied out of the water resources granted or confirmed under this title and the Tohono O'odham settlement agreement; and

[''(C) any rights of the allottees to groundwater, surface water, or effluent shall be limited to the water rights granted or confirmed under this title and the Tohono O'odham settlement agreement.

[''(2) LIMITATION OF CERTAIN CLAIMS BY ALLOTTEES.—No allottee within the San Xavier Reservation may—

[''(A) assert any past, present, or future claim for water rights arising from time immemorial and, thereafter, forever, or any claim for injury to water rights (including future injury to water rights) arising from time immemorial and thereafter, forever, against—

[''(i) the United States;

[''(ii) the State (or any agency or political subdivision of the State);

[''(iii) any municipal corporation; or

[''(iv) any other person or entity; or

[''(B) continue to assert a claim described in subparagraph (A), if the claim was first asserted before the enforceability date.

[''(3) CLAIMS BY FEE OWNERS OF ALLOTTED LAND.—

[''(A) IN GENERAL.—No fee owner of allotted land within the San Xavier Reservation may assert any claim to the extent that—

[''(i) the claim has been waived and released in the Tohono O'odham settlement agreement; and

[''(ii) the fee owner of allotted land asserting the claim is a member of the applicable allottee class.

[''(B) OFFSET.—Any benefits awarded to a fee owner of allotted land as a result of a successful claim shall be offset by benefits received by that fee owner of allotted land under this title.

[''(4) LIMITATION OF CLAIMS AGAINST THE NATION.—

[''(A) IN GENERAL.—Except as provided in subparagraph (B), no allottee may assert against the Nation any claims for water rights arising from time immemorial and, thereafter, forever, claims for injury to water rights arising from time immemorial and thereafter forever.

[''(B) EXCEPTION.—Under section 307(a)(1)(G) and subsections (a) and (b) of section 308, the allottees shall retain rights to share in the water resources granted or confirmed under this title and the Tohono O'odham settlement agreement.

[''(g) CONSENT.—

[''(1) GRANT OF CONSENT.—Congress grants to the Nation and the San Xavier Cooperative Association under section 305(d) consent to maintain civil actions against the United States in the courts of the United States under section 1346, 1491, or 1505 of title 28, United States Code, respectively, to recover damages, if any, for the breach of any obligation of the Secretary under those sections.

[''(2) NO SUFFICIENT FUNDS DEFENSE.—The lack of sufficient funds in the cooperative fund to carry out the obligations of the Secretary may not be raised by the United States as a defense to any claim asserted under paragraph (1).

[''(3) REMEDY.—

[''(A) IN GENERAL.—Subject to subparagraph (B), the exclusive remedy for a civil action maintained under this subsection shall be monetary damages.

[''(B) OFFSET.—An award for damages for a claim under this subsection shall be offset against the amount of funds—

[''(i) made available by any Act of Congress; and

[''(ii) paid to the claimant by the Secretary in partial or complete satisfaction of the claim.

[''(4) NO CLAIMS ESTABLISHED.—Except as provided in paragraph (1), nothing in the subsection establishes any claim against the United States.

[''(h) JURISDICTION; WAIVER OF IMMUNITY; PARTIES.—

[''(1) JURISDICTION.—

[''(A) IN GENERAL.—Except as provided in subsection (i), the State court having jurisdiction over Gila River adjudication proceedings and decrees, shall have jurisdiction over—

[''(i) civil actions relating to the interpretation and enforcement of—

[''(I) this title;

[''(II) the Tohono O'odham settlement agreement; and

[''(III) agreements referred to in section 309(h)(2); and

[''(ii) civil actions brought by or against the allottees or fee owners of allotted land for the interpretation of, or legal or equitable remedies with respect to, claims of the allottees or fee owners of allotted land that are not claims for water rights, injuries to water rights or other claims that are barred or waived and released under this title or the Tohono O'odham settlement agreement.

[''(B) LIMITATION.—Except as provided in subparagraph (A), no State court or court of the Nation shall have jurisdiction over any civil action described in subparagraph (A).

[''(2) WAIVER.—

[''(A) IN GENERAL.—The United States and the Nation waive sovereign immunity solely for claims for—

[''(i) declaratory judgment or injunctive relief in any civil action arising under this title; and

[''(ii) such claims and remedies as may be prescribed in any agreement authorized under this title.

[''(B) LIMITATION ON STANDING.—If a governmental entity not described in subparagraph (A) asserts immunity in any civil action that arises under this title (unless the entity waives immunity for declaratory judgment or injunctive relief) or any agreement authorized under this title (unless the entity waives immunity for the claims and remedies prescribed in the agreement)—

[''(i) the governmental entity shall not have standing to initiate or assert any claim, or seek any remedy against the United States or the Nation, in the civil action; and

[''(ii) the waivers of sovereign immunity under subparagraph (A) shall have no effect in the civil action.

[''(C) MONETARY RELIEF.—A waiver of immunity under this paragraph shall not extend to any claim for damages, costs, attorneys' fees, or other monetary relief.

[''(3) NATION AS A PARTY.—

[''(A) IN GENERAL.—Not later than 60 days before the date on which a civil action under paragraph (1)(A)(ii) is filed by an allottee or fee owner of allotted land, the allottee or fee owner, as the case may be, shall provide to the Nation a notice of intent to file the civil action, accompanied by a request for consultation.

[''(B) JOINDER.—If the Nation is not a party to a civil action as originally commenced under paragraph (1)(A)(ii), the Nation shall be joined as a party.

[''(i) REGULATION AND JURISDICTION OVER DISPUTE RESOLUTION.—

[''(1) REGULATION.—The Nation shall have jurisdiction to manage, control, permit, administer, and otherwise regulate the water resources granted or confirmed under this title and the Tohono O'odham settlement agreement—

[''(A) with respect to the use of those resources by—

[''(i) the Nation;

[''(ii) individual members of the Nation;

[''(iii) districts of the Nation; and

[''(iv) allottees; and

[''(B) with respect to any entitlement to those resources for which a fee owner of allotted land has received a final determination under applicable law.

[''(2) JURISDICTION.—Subject to a requirement of exhaustion of any administrative or other remedies prescribed under the laws of the Nation, jurisdiction over any disputes relating to the matters described in paragraph (1) shall be vested in the courts of the Nation.

[''(3) APPLICABLE LAW.—The regulatory and remedial procedures referred to in paragraphs (1) and (2) shall be subject to all applicable law.

[''(j) FEDERAL JURISDICTION.—The Federal Courts shall have concurrent jurisdiction over actions described in subsection 312(h) to the extent otherwise provided in Federal law.

["SEC. 313. AFTER-ACQUIRED TRUST LAND.

[''(a) IN GENERAL.—Except as provided in subsection (b)—

[''(1) the Nation may seek to have taken into trust by the United States, for the benefit of the Nation, legal title to additional land within the State and outside the exterior boundaries of the Nation's Reservation only in accordance with an Act of Congress specifically authorizing the transfer for the benefit of the Nation;

[''(2) it is the intent of Congress in enacting this title that future Acts of Congress described in paragraph (1) should provide that land taken into trust under that paragraph will include only such water rights and water use privileges as are consistent with State water law and State water management policy; and

[''(3) after-acquired trust land shall not include Federal reserved rights to surface water or groundwater.

[''(b) EXCEPTION.—Subsection (a) shall not apply to land acquired by the Nation under the Gila Bend Indian Reservation Lands Replacement Act (100 Stat. 1798).

[''SEC. 314. NONREIMBURSABLE COSTS.

[''(a) CENTRAL ARIZONA WATER CONSERVATION DISTRICT.—For the purpose of determining the allocation and repayment of costs of any stage of the Central Arizona Project constructed after the effective date, the costs associated with the delivery of Central Arizona Project water acquired under sections 304(a) and 306(a), whether that water is delivered for use by the Nation or in accordance with any assignment, exchange, lease, option to lease, or other agreement for the temporary disposition of water entered into by the Nation—

[''(1) shall be nonreimbursable; and

[''(2) shall be excluded from the repayment obligation of the Central Arizona Water Conservation District.

[''(b) CLAIMS BY UNITED STATES.—The United States shall—

[''(1) make no claim against the Nation or any allottee for reimbursement or repayment of any cost associated with—

[''(A) the construction of facilities under the Colorado River Basin Project Act (43 U.S.C. 1501 et seq.);

[''(B) the delivery of Central Arizona Project water for any use authorized under this title; or

[''(C) the implementation of this title;

[''(2) make no claim against the Nation for reimbursement or repayment of the costs associated with the construction of facilities described in paragraph (1)(A) for the benefit of and use on land that—

[''(A) is known as the 'San Lucy Farm'; and

[''(B) was acquired by the Nation under the Gila Bend Indian Reservation Lands Replacement Act (100 Stat. 1798); and

[''(3) impose no assessment with respect to the costs referred to in paragraphs (1) and (2) against—

[''(A) trust or allotted land within the Nation's Reservation; or

[''(B) the land described in paragraph (2).

[''SEC. 315. TRUST FUND.

[''(a) REAUTHORIZATION.—Congress reauthorizes the trust fund established by section 309 of the 1982 Act, containing an initial deposit of $15,000,000 made under that section, for use in carrying out this title.

[''(b) EXPENDITURE AND INVESTMENT.—Subject to the limitations of subsection (d), the principal and all accrued interest and dividends in the trust fund established under section 309 of the 1982 Act may be—

[''(1) expended by the Nation for any governmental purpose; and

[''(2) invested by the Nation in accordance with such polices as the Nation may adopt.

[''(c) RESPONSIBILITY OF SECRETARY.—The Secretary shall not—

[''(A) be responsible for the review, approval, or audit of the use and expenditure of any funds from the trust fund reauthorized by subsection (a); or

[''(B) be subject to liability for any claim or cause of action arising from the use or expenditure by the Nation of those funds.

[''(d) CONDITIONS OF TRUST.—

[''(1) RESERVE FOR THE COST OF SUBJUGATION.—The Nation shall reserve in the trust fund reauthorized by subsection (a)—

[''(A) the principal amount of at least $3,000,000; and

[''(B) interest on that amount that accrues during the period beginning on the enforceability date and ending on the earlier of—

[''(i) the date on which full payment of such costs has been made; or

[''(ii) the date that is 10 years after the enforceability date.

[''(2) PAYMENT.—The costs described in paragraph (1) shall be paid in the amount, on the terms, and for the purposes prescribed in section 307(a)(1)(F).

[''(3) LIMITATION ON RESTRICTIONS.—On the occurrence of an event described in clause (i) or (ii) of paragraph (1)(B)—

[''(A) the restrictions imposed on funds from the trust fund described in paragraph (1) shall terminate; and

[''(B) any of those funds remaining that were reserved under paragraph (1) may be used by the Nation under subsection (b)(1).

[''SEC. 316. MISCELLANEOUS PROVISIONS.

[''(a) IN GENERAL.—Nothing in this title—

[''(1) establishes the applicability or inapplicability to groundwater of any doctrine of Federal reserved rights;

[''(2) limits the ability of the Nation to enter into any agreement with the Arizona Water Banking Authority (or a successor agency) in accordance with State law;

[''(3) prohibits the Nation, any individual member of the Nation, an allottee, or a fee owner of allotted land in the San Xavier Reservation from lawfully acquiring water rights for use in the Tucson management area in addition to the water rights granted or confirmed under this title and the Tohono O'odham settlement agreement;

[''(4) abrogates any rights or remedies existing under section 1346 or 1491 of title 28, United States Code;

[''(5) affects the obligations of the parties under the Agreement of December 11, 1980 with respect to the 8,000 acre feet of Central Arizona Project water contracted by the Nation for the Sif Oidak District;

[''(6)(A) applies to any exempt well;

[''(B) prohibits or limits the drilling of any exempt well within—

[''(i) the San Xavier Reservation; or

[''(ii) the eastern Schuk Toak District; or

[''(C) subjects water from any exempt well to any pumping limitation under this title; or

[''(7) diminishes or abrogates rights to use water under—

[''(A) contracts of the Nation in existence before the enforceability date; or

[''(B) the well site agreement referred to in the Asarco agreement and any well site agreement entered into under the Asarco agreement.

[''(b) NO EFFECT ON FUTURE ALLOCATIONS.—Water received under a lease or exchange of Central Arizona Project water under this title does not affect any future allocation or reallocation of Central Arizona Project water by the Secretary.

[''SEC. 317. AUTHORIZED COSTS.

[''(a) IN GENERAL.—There are authorized to be appropriated to the Secretary from the Lower Colorado River Basin Development Fund—

[''(1) to construct features of irrigation systems described in paragraphs (1) through (4) of section 304(c) that are not authorized to be constructed under any other provision of law, an amount equal to the sum of—

[''(A) $3,500,000; and

[''(B) such additional amount as the Secretary determines to be necessary to adjust the amount under subparagraph (A) to account for ordinary fluctuations in the costs of construction of irrigation features for the period beginning on October 12, 1982, and ending on the date on which the construction of the features described in this subparagraph is initiated, as indicated by engineering cost indices applicable to the type of construction involved;

[''(2) $18,300,000 in lieu of construction to implement section 304(c)(3)(B);

[''(3) $891,200 to implement a water management plan for the San Xavier Reservation under section 308(d);

[''(4) $237,200 to implement a water management plan for the eastern Schuk Toak District under section 308(d);

[''(5) $4,000,000 to complete the water resources study under section 311(d);

[''(6) $215,000 to develop and implement a groundwater monitoring program for the San Xavier Reservation under section 311(c)(1);

[''(7) $175,000 to develop and implement a groundwater monitoring program for the eastern Schuk Toak District under section 311(c)(2);

[''(8) $250,000 to complete the Asarco land exchange study under section 311(f); and

[''(9) such additional sums as are necessary to carry out the provisions of this title other than the provisions referred to in paragraphs (1) through (8).

[''(b) TREATMENT OF APPROPRIATED AMOUNTS.—Amounts made available under subsection (a) shall be considered to be authorized costs for purposes of section 403(f)(2)(D)(iii) of the Colorado River Basin Project Act (43 U.S.C. 1543(f)(2)(D)(iii)) (as amended by section 107(a) of the Arizona Water Settlements Act).''.

[SEC. 302. SOUTHERN ARIZONA WATER RIGHTS SETTLEMENT EFFECTIVE DATE.

[(a) DEFINITIONS.—The definitions under section 301 of the Southern Arizona Water Rights Settlement Amendments Act of 2003 (as contained in the amendment made by section 301) shall apply to this title.

[(b) EFFECTIVE DATE.—This title and the amendments made by this title take effect as of the date on which the Secretary publishes in the Federal Register a statement of findings that—

[(1)(A) to the extent that the Tohono O'odham settlement agreement conflicts with this title or an amendment made by this title, the Tohono O'odham settlement agreement has been revised through an amendment to eliminate those conflicts; and

[(B) the Tohono O'odham settlement agreement, as so revised, has been executed by the parties and the Secretary;

[(2) the Secretary and other parties to the agreements described in section 309(h)(2) of the Southern Arizona Water Rights Settlement Amendments Act of 2003 (as contained in the amendment made by section 301) have executed those agreements;

[(3) the Secretary has approved the interim allottee water rights code described in section 308(b)(3)(A) of the Southern Arizona Water Rights Settlement Amendments Act of 2003 (as contained in the amendment made by section 301);

[(4) final dismissal with prejudice has been entered in each of the Adams case, the Alvarez case, and the Tucson case on the sole condition that the Secretary publishes the findings specified in this section;

[(5) the judgment and decree attached to the Tohono O'odham settlement agreement as exhibit 17.1 has been approved by the State court having jurisdiction over the Gila River adjudication proceedings, and that judgment and decree have become final and nonappealable;

[(6) implementation costs have been identified and retained in the Lower Colorado River Basin Development Fund, specifically—

[(A) $18,300,000 in lieu of construction to implement section 304(c)(3)(A)(ii);

[(B) $891,200 to implement a water management plan for the San Xavier Reservation under section 308(d) of the Southern Arizona Water Rights Settlement Amendments Act of 2003 (as contained in the amendment made by section 301);

[(C) $237,200 to implement a water management plan for the eastern Schuk Toak District under section 308(d) of the Southern Arizona Water Rights Settlement Amendments Act of 2003 (as contained in the amendment made by section 301);

[(D) $4,000,000 to complete the water resources study under section 311(d) of the Southern Arizona Water Rights Settlement

Amendments Act of 2003 (as contained in the amendment made by section 301);

[(E) $215,000 to develop and implement a groundwater monitoring program for the San Xavier Reservation under section 311(c)(1) of the Southern Arizona Water Rights Settlement Amendments Act of 2003 (as contained in the amendment made by section 301);

[(F) $175,000 to develop and implement a groundwater monitoring program for the eastern Schuk Toak District under section 311(c)(2) of the Southern Arizona Water Rights Settlement Amendments Act of 2003 (as contained in the amendment made by section 301); and

[(G) $250,000 to complete the Asarco land exchange study under section 311(f) of the Southern Arizona Water Rights Settlement Amendments Act of 2003 (as contained in the amendment made by section 301);

[(7) the State has enacted legislation that—

[(A) qualifies the Nation to earn long-term storage credits under the Asarco agreement;

[(B) implements the San Xavier groundwater protection program in accordance with paragraph 8.8 of the Tohono O'odham settlement agreement;

[(C) enables the State to carry out section 306(b); and

[(D) confirms the jurisdiction of the State court having jurisdiction over Gila River adjudication proceedings and decrees to carry out the provisions of sections 312(d) and 312(h) of the Southern Arizona Water Rights Settlement Amendments Act of 2003 (as contained in the amendment made by section 301);

[(8) the Secretary and the State have agreed to an acceptable firming schedule referred to in section 105(b)(2)(C); and

[(9) a final judgment has been entered in Central Arizona Water Conservation District v. United States (No. CIV 95–625–TUC–WDB(EHC), No. CIV 95–1720–PHX–EHC) (Consolidated Action) in accordance with the repayment stipulation as provided in section 207.

[(c) FAILURE TO PUBLISH STATEMENT OF FINDINGS.—If the Secretary does not publish a statement of findings under subsection (a) by December 31, 2007—

[(1) the 1982 Act shall remain in full force and effect;

[(2) this title shall not take effect; and

[(3) any funds made available by the State under this title that are not expended, together with any interest on those funds, shall immediately revert to the State.

[TITLE IV—SAN CARLOS APACHE TRIBE WATER RIGHTS SETTLEMENT]

[SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

[(a) SHORT TITLE.—This Act may be cited as the ''Arizona Water Settlements Act''.

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

SEC. 2. DEFINITIONS.

In titles I and II:

(1) ACRE-FEET.—The term ''acre-feet'' means acre-feet per year.

(2) AFTER-ACQUIRED TRUST LAND.—The term ''after-acquired trust land'' means land that—

(A) is located—

(i) within the State; but

(ii) outside the exterior boundaries of the Reservation; and

(B) is taken into trust by the United States for the benefit of the Community after the enforceability date.

(3) AGRICULTURAL PRIORITY WATER.—The term ''agricultural priority water'' means Central Arizona Project non-Indian agricultural priority water, as defined in the Gila River agreement.

(4) ALLOTTEE.—The term ''allottee'' means a person who holds a beneficial real property interest in an Indian allotment that is—

(A) located within the Reservation; and

(B) held in trust by the United States.

(5) ARIZONA INDIAN TRIBE.—The term ''Arizona Indian tribe'' means an Indian tribe (as defined in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b)) that is located in the State.

(6) ASARCO.—The term ''Asarco'' means Asarco Incorporated, a New Jersey corporation of that name, and its subsidiaries operating mining operations in the State.

(7) CAP CONTRACTOR.—The term ''CAP contractor'' means a person or entity that has entered into a long-term contract (as that term is used in the repayment stipulation) with the United States for delivery of water through the CAP system.

(8) CAP OPERATING AGENCY.—The term ''CAP operating agency'' means the entity or entities authorized to assume responsibility for the care, operation, maintenance, and replacement of the CAP system.

(9) CAP REPAYMENT CONTRACT.—

(A) IN GENERAL.—The term ''CAP repayment contract'' means the contract dated December 1, 1988 (Contract No. 14–0906–09W–09245, Amendment No. 1) between the United States and the Central Arizona Water Conservation District for the delivery of water and the repayment of costs of the Central Arizona Project.

(B) INCLUSIONS.—The term ''CAP repayment contract'' includes all amendments to and revisions of that contract.

(10) CAP SUBCONTRACTOR.—The term ''CAP subcontractor'' means a person or entity that has entered into a long-term subcontract (as that term is used in the repayment stipulation) with the United States and the Central Arizona Water Conservation District for the delivery of water through the CAP system.

(11) CAP SYSTEM.—The term ''CAP system'' means—

(A) the Mark Wilmer Pumping Plant;

(B) the Hayden-Rhodes Aqueduct;

(C) the Fannin-McFarland Aqueduct;

(D) the Tucson Aqueduct;

(E) the pumping plants and appurtenant works of the Central Arizona Project aqueduct system that are associated with the features described in subparagraphs (A) through (D); and

(F) any extensions of, additions to, or replacements for the features described in subparagraphs (A) through (E).

(12) CENTRAL ARIZONA PROJECT.—The term ''Central Arizona Project'' means the reclamation project authorized and constructed by the United States in accordance with title III of the Colorado River Basin Project Act (43 U.S.C. 1521 et seq.).

(13) CENTRAL ARIZONA WATER CONSERVATION DISTRICT.—The term ''Central Arizona Water Conservation District'' means the political subdivision of the State that is the contractor under the CAP repayment contract.

(14) CITIES.—The term ''Cities'' means the cities of Chandler, Glendale, Goodyear, Mesa, Peoria, Phoenix, and Scottsdale, Arizona.

(15) COMMUNITY.—The term ''Community'' means the Gila River Indian Community, a government composed of members of the Pima Tribe and the Maricopa Tribe and organized under section 16 of the Act of June 18, 1934 (25 U.S.C. 476).

(16) COMMUNITY CAP WATER.—The term ''Community CAP water'' means water to which the Community is entitled under the Community water delivery contract.

(17) COMMUNITY REPAYMENT CONTRACT.—

(A) IN GENERAL.—The term ''Community repayment contract'' means Contract No. 6–0907–0903–09W0345 between the United States and the Community dated July 20, 1998, providing for the construction of water delivery facilities on the Reservation.

(B) INCLUSIONS.—The term ''Community repayment contract'' includes any amendments to the contract described in subparagraph (A).

(18) COMMUNITY WATER DELIVERY CONTRACT.—

(A) IN GENERAL.—The term ''Community water delivery contract'' means Contract No. 3–0907–0930–09W0284 between the Community and the United States dated October 22, 1992.

(B) INCLUSIONS.—The term ''Community water delivery contract'' includes any amendments to the contract described in subparagraph (A).

(19) CRR PROJECT WORKS.—

(A) IN GENERAL.—The term ''CRR project works'' means the portions of the San Carlos Irrigation Project located on the Reservation.

(B) INCLUSION.—The term ''CRR Project works'' includes the portion of the San Carlos Irrigation Project known as the ''Southside Canal'', from the point at which the Southside Canal connects with the Pima Canal to the boundary of the Reservation.

(20) DIRECTOR.—The term ''Director'' means—

(A) the Director of the Arizona Department of Water Resources; or

(B) with respect to an action to be carried out under this title, a State official or agency designated by the Governor or the State legislature.

(21) ENFORCEABILITY DATE.—The term ''enforceability date'' means the date on which the Secretary publishes in the Federal Register the statement of findings described in section 207(c).

(22) FEE LAND.—The term ''fee land'' means land, other than off-Reservation trust land,

owned by the Community outside the exterior boundaries of the Reservation as of December 31, 2002.

(23) FIXED OM&R CHARGE.—The term ''fixed OM&R charge'' has the meaning given the term in the repayment stipulation.

(24) FRANKLIN IRRIGATION DISTRICT.—The term ''Franklin Irrigation District'' means the entity of that name that is a political subdivision of the State and organized under the laws of the State.

(25) GILA RIVER ADJUDICATION PROCEEDINGS.—The term ''Gila River adjudication proceedings'' means the action pending in the Superior Court of the State of Arizona in and for the County of Maricopa styled ''In Re the General Adjudication of All Rights To Use Water In The Gila River System and Source'' W–091 (Salt), W–092 (Verde), W–093 (Upper Gila), W–094 (San Pedro) (Consolidated).

(26) GILA RIVER AGREEMENT.—

(A) IN GENERAL.—The term ''Gila River agreement'' means the agreement entitled the ''Gila River Indian Community Water Rights Settlement Agreement'', dated February 4, 2003.

(B) INCLUSIONS.—The term ''Gila River agreement'' includes—

(i) all exhibits to that agreement (including the New Mexico Risk Allocation Agreement, which is also an exhibit to the UVD Agreement); and

(ii) any amendment to that agreement or to an exhibit to that agreement made or added pursuant to that agreement.

(27) GILA VALLEY IRRIGATION DISTRICT.—The term ''Gila Valley Irrigation District'' means the entity of that name that is a political subdivision of the State and organized under the laws of the State.

(28) GLOBE EQUITY DECREE.—

(A) IN GENERAL.—The term ''Globe Equity Decree'' means the decree dated June 29, 1935, entered in United States of America v. Gila Valley Irrigation District, Globe Equity No. 59, et al., by the United States District Court for the District of Arizona.

(B) INCLUSIONS.—The term ''Globe Equity Decree'' includes all court orders and decisions supplemental to that decree.

(29) HAGGARD DECREE.—

(A) IN GENERAL.—The term ''Haggard Decree'' means the decree dated June 11, 1903, entered in United States of America, as guardian of Chief Charley Juan Saul and Cyrus Sam, Maricopa Indians and 400 other Maricopa Indians similarly situated v. Haggard, et al., Cause No. 19, in the District Court for the Third Judicial District of the Territory of Arizona, in and for the County of Maricopa.

(B) INCLUSIONS.—The term ''Haggard Decree'' includes all court orders and decisions supplemental to that decree.

(30) INCLUDING.—The term ''including'' has the same meaning as the term ''including, but not limited to''.

(31) INJURY TO WATER QUALITY.—The term ''injury to water quality'' means any contamination, diminution, or deprivation of water quality under Federal, State, or other law.

(32) INJURY TO WATER RIGHTS.—

(A) IN GENERAL.—The term ''injury to water rights'' means an interference with, diminution of, or deprivation of water rights under Federal, State, or other law.

(B) INCLUSION.—The term ''injury to water rights'' includes a change in the underground water table and any effect of such a change.

(C) EXCLUSION.—The term ''injury to water rights'' does not include subsidence damage or injury to water quality.

(33) LOWER COLORADO RIVER BASIN DEVELOPMENT FUND.—The term ''Lower Colorado River Basin Development Fund'' means the fund established by section 403 of the Colorado River Basin Project Act (43 U.S.C. 1543).

(34) MASTER AGREEMENT.—The term ''master agreement'' means the agreement entitled ''Arizona Water Settlement Agreement'' among the Director, the Central Arizona Water Conservation District, and the Secretary, dated August 16, 2004.

(35) NM CAP ENTITY.—The term ''NM CAP entity'' means the entity or entities that the State of New Mexico may authorize to assume responsibility for the design, construction, operation, maintenance, and replacement of the New Mexico Unit.

(36) NEW MEXICO CONSUMPTIVE USE AND FORBEARANCE AGREEMENT.—

(A) IN GENERAL.—The term ''New Mexico Consumptive Use and Forbearance Agreement'' means that agreement entitled the ''New Mexico Consumptive Use and Forbearance Agreement,'' entered into by and among the United States, the Community, the San Carlos Irrigation and Drainage District, and all of the signatories to the UVD Agreement, and approved by the State of New Mexico, and authorized, ratified, and approved by section 212(b).

(B) INCLUSIONS.—The ''New Mexico Consumptive Use and Forbearance Agreement'' includes—

(i) all exhibits to that agreement (including the New Mexico Risk Allocation agreement, which is also an exhibit to the UVD agreement); and

(ii) any amendment to that agreement made or added pursuant to that agreement.

(37) NEW MEXICO UNIT.—The term ''New Mexico Unit'' means that unit or units of the Central Arizona Project authorized by sections 301(a)(4) and 304 of the Colorado River Basin Project Act (43 U.S.C. 1521(a)(4), 1524) (as amended by section 212).

(38) NEW MEXICO UNIT AGREEMENT.—

(A) IN GENERAL.—The term ''New Mexico Unit Agreement'' means that agreement entitled the ''New Mexico Unit Agreement,'' to be entered into by and between the United States and the NM CAP entity upon notice to the Secretary from the State of New Mexico that the State of New Mexico intends to have the New Mexico Unit constructed or developed.

(B) INCLUSIONS.—The ''New Mexico Unit Agreement'' includes—

(i) all exhibits to that agreement; and

(ii) any amendment to that agreement made or added pursuant to that agreement.

(39) OFF-RESERVATION TRUST LAND.—The term ''off-Reservation trust land'' means land outside the exterior boundaries of the Reservation that is held in trust by the United States for the benefit of the Community as of the enforceability date.

(40) PHELPS DODGE.—The term ''Phelps Dodge'' means the Phelps Dodge Corporation, a New York corporation of that name, and Phelps Dodge's subsidiaries (including Phelps Dodge Morenci, Inc., a Delaware corporation of that name), and Phelps Dodge's successors or assigns.

(41) REPAYMENT STIPULATION.—The term ''repayment stipulation'' means the Revised Stipulation Regarding a Stay of Litigation, Resolution of Issues During the Stay, and for Ultimate Judgment Upon the Satisfaction of Conditions, filed with the United States District Court for the District of Arizona in Central Arizona Water Conservation District v. United States, et al., No. CIV 95–09625–09TUC–09WDB(EHC), No. CIV 95–091720–09PHX–09EHC (Consolidated Action), and that court's order dated April 28, 2003, and any amendments or revisions thereto.

(42) RESERVATION.—

(A) IN GENERAL.—Except as provided in sections 207(d) and 210(d), the term ''Reservation'' means the land located within the exterior boundaries of the reservation created under sections 3 and 4 of the Act of February 28, 1859 (11 Stat. 401, chapter LXVI) and Executive Orders of August 31, 1876, June 14, 1879, May 5, 1882, November 15, 1883, July 31, 1911, June 2, 1913, August 27, 1914, and July 19, 1915.

(B) EXCLUSION.—The term ''Reservation'' does not include the land located in sections 16 and 36, Township 4 South, Range 4 East, Salt and Gila River Base and Meridian.

(43) ROOSEVELT HABITAT CONSERVATION PLAN.—The term ''Roosevelt Habitat Conservation Plan'' means the habitat conservation plan approved by the United States Fish and Wildlife Service under section 10(a)(1)(B) of the Endangered Species Act of 1973 (16 U.S.C. 1539(a)(1)(B)) for the incidental taking of endangered, threatened, and candidate species resulting from the continued operation by the Salt River Project of Roosevelt Dam and Lake, near Phoenix, Arizona.

(44) ROOSEVELT WATER CONSERVATION DISTRICT.—The term ''Roosevelt Water Conservation District'' means the entity of that name that is a political subdivision of the State and an irrigation district organized under the law of the State.

(45) SAFFORD.—The term ''Safford'' means the city of Safford, Arizona.

(46) SALT RIVER PROJECT.—The term ''Salt River Project'' means the Salt River Project Agricultural Improvement and Power District, a political subdivision of the State, and the Salt River Valley Water Users' Association, an Arizona Territorial corporation.

(47) SAN CARLOS APACHE TRIBE.—The term ''San Carlos Apache Tribe'' means the San Carlos Apache Tribe, a tribe of Apache Indians organized under Section 16 of the Indian Reorganization Act of June 18, 1934, 48 Stat. 987 (25 U.S.C. 476).

(48) SAN CARLOS IRRIGATION AND DRAINAGE DISTRICT.—The term ''San Carlos Irrigation and Drainage District'' means the entity of that name that is a political subdivision of the State and an irrigation and drainage district organized under the laws of the State.

(49) SAN CARLOS IRRIGATION PROJECT.—

(A) IN GENERAL.—The term ''San Carlos Irrigation Project'' means the San Carlos irrigation project authorized under the Act of June 7, 1924 (43 Stat. 475).

(B) INCLUSIONS.—The term ''San Carlos Irrigation Project'' includes any amendments and supplements to the Act described in subparagraph (A).

(50) SECRETARY.—The term ''Secretary'' means the Secretary of the Interior.

(51) SPECIAL HOT LANDS.—The term ''special hot lands'' has the meaning given the term in subparagraph 2.34 of the UVD agreement.

(52) STATE.—The term ''State'' means the State of Arizona.

(53) SUBCONTRACT.—

(A) IN GENERAL.—The term ''subcontract'' means a Central Arizona Project water delivery subcontract.

(B) INCLUSION.—The term ''subcontract'' includes an amendment to a subcontract.

(54) SUBSIDENCE DAMAGE.—The term ''subsidence damage'' means injury to land, water, or other real property resulting from the settling of geologic strata or cracking in the surface of the Earth of any length or depth, which settling or cracking is caused by the pumping of underground water.

(55) TBI ELIGIBLE ACRES.—The term ''TBI eligible acres'' has the meaning given the term in subparagraph 2.37 of the UVD agreement.

(56) UNCONTRACTED MUNICIPAL AND INDUSTRIAL WATER.—The term ''uncontracted municipal and industrial water'' means Central Arizona Project municipal and industrial priority water that is not subject to subcontract on the date of enactment of this Act.

(57) UV DECREED ACRES.—

(A) IN GENERAL.—The term ''UV decreed acres'' means the land located upstream and to the east of the Coolidge Dam for which water may be diverted pursuant to the Globe Equity Decree.

(B) EXCLUSION.—The term ''UV decreed acres'' does not include the reservation of the San Carlos Apache Tribe.

(58) UV DECREED WATER RIGHTS.—The term ''UV decreed water rights'' means the right to divert water for use on UV decreed acres in accordance with the Globe Equity Decree.

(59) UV IMPACT ZONE.—The term ''UV impact zone'' has the meaning given the term in subparagraph 2.47 of the UVD agreement.

(60) UV SUBJUGATED LAND.—The term ''UV subjugated land'' has the meaning given the term in subparagraph 2.50 of the UVD agreement.

(61) UVD AGREEMENT.—The term ''UVD agreement'' means the agreement among the Community, the United States, the San Carlos Irrigation and Drainage District, the Franklin Irrigation District, the Gila Valley Irrigation District, Phelps Dodge, and other parties located in the upper valley of the Gila River, dated September 2, 2004.

(62) UV SIGNATORIES PARTIES.—The term ''UV signatories'' means the parties to the UVD agreement other than the United States, the San Carlos Irrigation and Drainage District, and the Community.

(63) WATER OM&R FUND.—The term ''Water OM&R Fund'' means the Gila River Indian Community Water OM&R Trust Fund established by section 208.

(64) WATER RIGHT.—The term ''water right'' means any right in or to groundwater, surface water, or effluent under Federal, State, or other law.

(65) WATER RIGHTS APPURTENANT TO NEW MEXICO 381 ACRES.—The term ''water rights appurtenant to New Mexico 381 acres'' means the water rights—

(A) appurtenant to the 380.81 acres described in the decree in Arizona v. California, 376 U.S. 340, 349 (1964); and

(B) appurtenant to other land, or for other uses, for which the water rights described in subparagraph (A) may be modified or used in accordance with that decree.

(66) WATER RIGHTS FOR NEW MEXICO DOMESTIC PURPOSES.—The term ''water rights for New Mexico domestic purposes'' means the water rights for domestic purposes of not more than 265 acre-feet of water for consumptive use described in paragraph IV(D)(2) of the decree in Arizona v. California, 376 U.S. 340, 350 (1964).

(67) 1994 BIOLOGICAL OPINION.—The term ''1994 biological opinion'' means the biological opinion, numbered 2–21–90–F–119, and dated April 15, 1994, relating to the transportation and delivery of Central Arizona Project water to the Gila River basin.

(68) 1996 BIOLOGICAL OPINION.—The term ''1996 biological opinion'' means the biological opinion, numbered 2–21–95–F–462 and dated July 23, 1996, relating to the impacts of modifying Roosevelt Dam on the southwestern willow flycatcher.

(69) 1999 BIOLOGICAL OPINION.—The term ''1999 biological opinion'' means the draft biological opinion numbered 2–21–91–F–706, and dated May 1999, relating to the impacts of the Central Arizona Project on Gila Topminnow in the Santa Cruz River basin through the introduction and spread of nonnative aquatic species.

SEC. 3. ARBITRATION.

(a) No arbitration decision rendered pursuant to subparagraph 12.1 of the UVD agreement or exhibit 20.1 of the Gila River agreement (including the joint control board agreement attached to exhibit 20.1) shall be considered invalid solely because the United States failed or refused to participate in such arbitration proceedings that resulted in such arbitration decision.

(b) Notwithstanding any provision of any agreement, exhibit, attachment, or other document ratified by this Act, if the Secretary is required to enter arbitration pursuant to this Act or any such document, the Secretary shall follow the procedures for arbitration established by chapter 5 of title 5, United States Code.

SEC. 4. ANTIDEFICIENCY.

The United States shall not be liable for failure to carry out any obligation or activity required by this Act, including all titles and all agreements or exhibits ratified or confirmed by this Act, funded by—

(1) the Lower Basin Development Fund established by section 403 of the Colorado River Basin Project Act (43 U.S.C. 1543), if there are not enough monies in that fund to fulfill those obligations or carry out those activities; or

(2) appropriations, if appropriations are not provided by Congress.

TITLE I—CENTRAL ARIZONA PROJECT SETTLEMENT

SEC. 101. SHORT TITLE.

This title may be cited as the ''Central Arizona Project Settlement Act of 2004''.

SEC. 102. FINDINGS.

Congress finds that—

(1) the water provided by the Central Arizona Project to Maricopa, Pinal, and Pima Counties in the State of Arizona, is vital to citizens of the State; and

(2) an agreement on the allocation of Central Arizona Project water among interested persons, including Federal and State interests, would provide important benefits to the Federal Government, the State of Arizona, Arizona Indian Tribes, and the citizens of the State.

SEC. 103. GENERAL PERMISSIBLE USES OF THE CENTRAL ARIZONA PROJECT.

In accordance with the CAP repayment contract, the Central Arizona Project may be used to transport nonproject water for—

(1) domestic, municipal, fish and wildlife, and industrial purposes; and

(2) any purpose authorized under the Colorado River Basin Project Act (43 U.S.C. 1501 et seq.).

SEC. 104. ALLOCATION OF CENTRAL ARIZONA PROJECT WATER.

(a) NON-INDIAN AGRICULTURAL PRIORITY WATER.—

(1) REALLOCATION TO ARIZONA INDIAN TRIBES.—

(A) IN GENERAL.—The Secretary shall reallocate 197,500 acre-feet of agricultural priority water made available pursuant to the master agreement for use by Arizona Indian tribes, of which—

(i) 102,000 acre-feet shall be reallocated to the Gila River Indian Community;

(ii) 28,200 acre-feet shall be reallocated to the Tohono O'odham Nation; and

(iii) subject to the conditions specified in subparagraph (B), 67,300 acre-feet shall be reallocated to Arizona Indian tribes.

(B) CONDITIONS.—The reallocation of agricultural priority water under subparagraph (A)(iii) shall be subject to the conditions that—

(i) such water shall be used to resolve Indian water claims in Arizona, and may be allocated by the Secretary to Arizona Indian Tribes in fulfillment of future Arizona Indian water rights settlement agreements approved by an Act of Congress. In the absence of an Arizona Indian water rights settlement that is approved by an Act of Congress after the date of enactment of this Act, the Secretary shall not allocate any such water until December 31, 2030. Any allocations made by the Secretary after such date shall be accompanied by a certification that the Secretary is making the allocation in order to assist in the resolution of an Arizona Indian water right claim. Any such water allocated to an Arizona Indian Tribe pursuant to a water delivery contract with the Secretary under this clause shall be counted on an acre-foot per acre-foot basis against any claim to water for that Tribe's reservation;

(ii) notwithstanding clause (i), the Secretary shall retain 6,411 acre-feet of water for use for a future water rights settlement agreement approved by an Act of Congress that settles the Navajo Nation's claims to water in Arizona. If Congress does not approve this settlement before December 31, 2030, the 6,411 acre-feet of CAP water shall be available to the Secretary under clause (i); and

(iii) the agricultural priority water shall not, without specific authorization by Act of Congress, be leased, exchanged, forborne, or otherwise transferred by an Arizona Indian tribe for any direct or indirect use outside the reservation of the Arizona Indian tribe.

(C) REPORT.—The Secretary, in consultation with Arizona Indian tribes and the State, shall prepare a report for Congress by December 31, 2016, that assesses whether the potential benefits of subparagraph (A) are being conveyed to Arizona Indian tribes pursuant to water rights settlements enacted subsequent to this Act. For those Arizona Indian tribes that have not yet settled water rights claims, the Secretary shall describe whether any active negotiations are taking place, and identify any critical water needs that exist on the reservation of each such Arizona Indian tribe. The Secretary shall also identify and report on the use of unused quantities of agricultural priority water made available to Arizona Indian tribes under subparagraph (A).

(2) REALLOCATION TO THE ARIZONA DEPARTMENT OF WATER RESOURCES.—

(A) IN GENERAL.—Subject to subparagraph (B) and subparagraph 9.3 of the master agreement, the Secretary shall reallocate up to 96,295 acre-feet of agricultural priority water made available pursuant to the master agreement to the Arizona Department of Water Resources, to be held under contract in trust for further allocation under subparagraph (C).

(B) REQUIRED DOCUMENTATION.—The reallocation of agricultural priority water under subparagraph (A) is subject to the condition that the Secretary execute any appropriate documents to memorialize the reallocation, including—

(i) an allocation decision; and

(ii) a contract that prohibits the direct use of the agricultural priority water by the Arizona Department of Water Resources.

(C) FURTHER ALLOCATION.—With respect to the allocation of agricultural priority water under subparagraph (A)—

(i) before that water may be further allocated—

(I) the Director shall submit to the Secretary, and the Secretary shall receive, a recommendation for reallocation;

(II) as soon as practicable after receiving the recommendation, the Secretary shall carry out all necessary reviews of the proposed reallocation, in accordance with applicable Federal law; and

(III) if the recommendation is rejected by the Secretary, the Secretary shall—

(aa) request a revised recommendation from the Director; and

(bb) proceed with any reviews required under subclause (II); and

(ii) as soon as practicable after the date on which agricultural priority water is further allocated, the Secretary shall offer to enter into a subcontract for that water in accordance with paragraphs (1) and (2) of subsection (d).

(D) MASTER AGREEMENT.—The reallocation of agricultural priority water under subparagraphs (A) and (C) is subject to the master agreement, including certain rights provided by the master agreement to water users in Pinal County, Arizona.

(3) PRIORITY.—The agricultural priority water reallocated under paragraphs (1) and (2) shall be subject to the condition that the water retain its non-Indian agricultural delivery priority.

(b) UNCONTRACTED CENTRAL ARIZONA PROJECT MUNICIPAL AND INDUSTRIAL PRIORITY WATER.—

(1) REALLOCATION.—The Secretary shall, on the recommendation of the Director, reallocate 65,647 acre-feet of uncontracted municipal and industrial water, of which—

(A) 285 acre-feet shall be reallocated to the town of Superior, Arizona;

(B) 806 acre-feet shall be reallocated to the Cave Creek Water Company;

(C) 1,931 acre-feet shall be reallocated to the Chaparral Water Company;

(D) 508 acre-feet shall be reallocated to the town of El Mirage, Arizona;

(E) 7,211 acre-feet shall be reallocated to the city of Goodyear, Arizona;
(F) 147 acre-feet shall be reallocated to the H2O Water Company;
(G) 7,115 acre-feet shall be reallocated to the city of Mesa, Arizona;
(H) 5,527 acre-feet shall be reallocated to the city of Peoria, Arizona;
(I) 2,981 acre-feet shall be reallocated to the city of Scottsdale, Arizona;
(J) 808 acre-feet shall be reallocated to the AVRA Cooperative;
(K) 4,986 acre-feet shall be reallocated to the city of Chandler, Arizona;
(L) 1,071 acre-feet shall be reallocated to the Del Lago (Vail) Water Company;
(M) 3,053 acre-feet shall be reallocated to the city of Glendale, Arizona;
(N) 1,521 acre-feet shall be reallocated to the Community Water Company of Green Valley, Arizona;
(O) 4,602 acre-feet shall be reallocated to the Metropolitan Domestic Water Improvement District;
(P) 3,557 acre-feet shall be reallocated to the town of Oro Valley, Arizona;
(Q) 8,206 acre-feet shall be reallocated to the city of Phoenix, Arizona;
(R) 2,876 acre-feet shall be reallocated to the city of Surprise, Arizona;
(S) 8,206 acre-feet shall be reallocated to the city of Tucson, Arizona; and
(T) 250 acre-feet shall be reallocated to the Valley Utilities Water Company.

(2) SUBCONTRACTS.—
(A) IN GENERAL.—As soon as practicable after the date of enactment of this Act, and in accordance with paragraphs (1) and (2) of subsection (d) and any other applicable Federal laws, the Secretary shall offer to enter into subcontracts for the delivery of the uncontracted municipal and industrial water reallocated under paragraph (1).
(B) REVISED RECOMMENDATION.—If the Secretary is precluded under applicable Federal law from entering into a subcontract with an entity identified in paragraph (1), the Secretary shall—
(i) request a revised recommendation from the Director; and
(ii) on receipt of a recommendation under clause (i), reallocate and enter into a subcontract for the delivery of the water in accordance with subparagraph (A).

(c) LIMITATIONS.—
(1) AMOUNT.—
(A) IN GENERAL.—The total amount of entitlements under long-term contracts (as defined in the repayment stipulation) for the delivery of Central Arizona Project water in the State shall not exceed 1,415,000 acre-feet, of which—
(i) 650,724 acre-feet shall be—
(I) under contract to Arizona Indian tribes; or
(II) available to the Secretary for allocation to Arizona Indian tribes; and
(ii) 764,276 acre-feet shall be under contract or available for allocation to—
(I) non-Indian municipal and industrial entities;
(II) the Arizona Department of Water Resources; and
(III) non-Indian agricultural entities.
(B) EXCEPTION.—Subparagraph (A) shall not apply to Central Arizona Project water delivered to water users in Arizona in exchange for Gila River water used in New Mexico as provided in section 304 of the Colorado River Basin Project Act (43 U.S.C. 1524) (as amended by section 212).
(2) TRANSFER.—
(A) IN GENERAL.—Except pursuant to the master agreement, Central Arizona Project water may not be transferred from—
(i) a use authorized under paragraph (1)(A)(i) to a use authorized under paragraph (1)(A)(ii); or
(ii) a use authorized under paragraph (1)(A)(ii) to a use authorized under paragraph (1)(A)(i).
(B) EXCEPTIONS.—
(i) LEASES.—A lease of Central Arizona Project water by an Arizona Indian tribe to an entity described in paragraph (1)(A)(ii) under an Indian water rights settlement approved by an Act of Congress shall not be considered to be a transfer for purposes of subparagraph (A).
(ii) EXCHANGES.—An exchange of Central Arizona Project water by an Arizona Indian tribe to an entity described in paragraph (1)(A)(ii) shall not be considered to be a transfer for purposes of subparagraph (A).
(iii) Notwithstanding subparagraph (A), up to 17,000 acre-feet of CAP municipal and industrial water under the subcontract among the United States, the Central Arizona Water Conservation District, and Asarco, subcontract No. 3–07–30–W0307, dated November 7, 1993, may be reallocated to the Community on execution of an exchange and lease agreement among the Community, the United States, and Asarco.

(d) CENTRAL ARIZONA PROJECT CONTRACTS AND SUBCONTRACTS.—
(1) IN GENERAL.—Notwithstanding section 6 of the Reclamation Project Act of 1939 (43 U.S.C. 485e), and paragraphs (2) and (3) of section 304(b) of the Colorado River Basin Project Act (43 U.S.C. 1524(b)), as soon as practicable after the date of enactment of this Act, the Secretary shall offer to enter into subcontracts or to amend all Central Arizona Project contracts and subcontracts in effect as of that date in accordance with paragraph (2).
(2) REQUIREMENTS.—All subcontracts and amendments to Central Arizona Project contracts and subcontracts under paragraph (1)—
(A) shall be for permanent service (within the meaning of section 5 of the Boulder Canyon Project Act of 1928 (43 U.S.C. 617d));
(B) shall have an initial delivery term that is the greater of—
(i) 100 years; or
(ii) a term—
(I) authorized by Congress; or
(II) provided under the appropriate Central Arizona Project contract or subcontract in existence on the date of enactment of this Act;
(C) shall conform to the shortage sharing criteria described in paragraph 5.3 of the Tohono O'odham settlement agreement;
(D) shall include the prohibition and exception described in subsection (e); and
(E) shall not require—
(i) that any Central Arizona Project water received in exchange for effluent be deducted from the contractual entitlement of the CAP contractor or CAP subcontractor; or
(ii) that any additional modification of the Central Arizona Project contracts or subcontracts be made as a condition of acceptance of the subcontract or amendments.
(3) APPLICABILITY.—This subsection does not apply to—
(A) a subcontract for non-Indian agricultural use; or
(B) a contract executed under paragraph 5(d) of the repayment stipulation.

(e) PROHIBITION ON TRANSFER.—
(1) IN GENERAL.—Except as provided in paragraph (2), no Central Arizona Project water shall be leased, exchanged, forborne, or otherwise transferred in any way for use directly or indirectly outside the State.
(2) EXCEPTIONS.—Central Arizona Project water may be—
(A) leased, exchanged, forborne, or otherwise transferred under an agreement with the Arizona Water Banking Authority that is in accordance with part 414 of title 43, Code of Federal Regulations; and
(B) delivered to users in Arizona in exchange for Gila River water used in New Mexico as provided in section 304 of the Colorado River Basin Project Act (43 U.S.C. 1524) (as amended by section 212).
(3) EFFECT OF SUBSECTION.—Nothing in this subsection prohibits any entity from entering into a contract with the Arizona Water Banking Authority or a successor of the Authority under State law.

SEC. 105. FIRMING OF CENTRAL ARIZONA PROJECT INDIAN WATER.

(a) FIRMING PROGRAM.—The Secretary and the State shall develop a firming program to ensure that 60,648 acre-feet of the agricultural priority water made available pursuant to the master agreement and reallocated to Arizona Indian tribes under section 104(a)(1), shall, for a 100-year period, be delivered during water shortages in the same manner as water with a municipal and industrial delivery priority in the Central Arizona Project system is delivered during water shortages.

(b) DUTIES.—
(1) SECRETARY.—The Secretary shall—
(A) firm 28,200 acre-feet of agricultural priority water reallocated to the Tohono O'odham Nation under section 104(a)(1)(A)(ii); and
(B) firm 8,724 acre-feet of agricultural priority water reallocated to Arizona Indian tribes under section 104(a)(1)(A)(iii).
(2) STATE.—The State shall—
(A) firm 15,000 acre-feet of agricultural priority water reallocated to the Community under section 104(a)(1)(A)(i);
(B) firm 8,724 acre-feet of agricultural priority water reallocated to Arizona Indian tribes under section 104(a)(1)(A)(iii); and
(C) assist the Secretary in carrying out obligations of the Secretary under paragraph (1)(A) in accordance with section 306 of the Southern Arizona Water Rights Settlement Amendments Act (as added by section 301).

(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary such sums as are necessary to carry out the duties of the Secretary under subsection (b)(1).

SEC. 106. ACQUISITION OF AGRICULTURAL PRIORITY WATER.

(a) APPROVAL OF AGREEMENT.—
(1) IN GENERAL.—Except to the extent that any provision of the master agreement conflicts with any provision of this title, the master agreement is authorized, ratified, and confirmed. To the extent that amendments are executed to make the master agreement consistent with this title, such amendments are also authorized, ratified, and confirmed.
(2) EXHIBITS.—The Secretary is directed to and shall execute the master agreement and any of the exhibits to the master agreement that have not been executed as of the date of enactment of this Act.
(3) DEBT COLLECTION.—For any agricultural priority water that is not relinquished under the master agreement, the subcontractor shall continue to pay, consistent with the master agreement, the portion of the debt associated with any retained water under section 9(d) of the Reclamation Project Act of 1939 (43 U.S.C. 485h(d)), and the Secretary shall apply such revenues toward the reimbursable section 9(d) debt of that subcontractor.
(4) EFFECTIVE DATE.—The provisions of subsections (b) and (c) shall take effect on the date of enactment of this Act.

(b) NONREIMBURSABLE DEBT.—
(1) IN GENERAL.—In accordance with the master agreement, the portion of debt incurred under section 9(d) of the Reclamation Project Act of 1939 (43 U.S.C. 485h(d)), and identified in the master agreement as nonreimbursable to the United States, shall be nonreimbursable and nonreturnable to the United States in an amount not to exceed $73,561,337.
(2) EXTENSION.—In accordance with the master agreement, the Secretary may extend, on an annual basis, the repayment schedule of debt incurred under section 9(d) of the Reclamation Project Act of 1939 (43 U.S.C. 485h(d)) by CAP subcontractors.

(c) EXEMPTION.—The Reclamation Reform Act of 1982 (43 U.S.C. 390aa et seq.) and any other acreage limitation or full cost pricing provisions of Federal law shall not apply to—

(1) land within the exterior boundaries of the Central Arizona Water Conservation District or served by Central Arizona Project water;

(2) land within the exterior boundaries of the Salt River Reservoir District;

(3) land held in trust by the United States for an Arizona Indian tribe that is—

(A) within the exterior boundaries of the Central Arizona Water Conservation District; or

(B) served by Central Arizona Project water; or

(4) any person, entity, or land, solely on the basis of—

(A) receipt of any benefits under this Act;

(B) execution or performance of the Gila River agreement; or

(C) the use, storage, delivery, lease, or exchange of Central Arizona Project water.

SEC. 107. LOWER COLORADO RIVER BASIN DEVELOPMENT FUND.

(a) IN GENERAL.—Section 403 of the Colorado River Basin Project Act (43 U.S.C. 1543) is amended by striking subsection (f) and inserting the following:

''(f) ADDITIONAL USES OF REVENUE FUNDS.—

''(1) CREDITING AGAINST CENTRAL ARIZONA WATER CONSERVATION DISTRICT PAYMENTS.—Funds credited to the development fund pursuant to subsection (b) and paragraphs (1) and (3) of subsection (c), the portion of revenues derived from the sale of power and energy for use in the State of Arizona pursuant to subsection (c)(2) in excess of the amount necessary to meet the requirements of paragraphs (1) and (2) of subsection (d), and any annual payment by the Central Arizona Water Conservation District to effect repayment of reimbursable Central Arizona Project construction costs, shall be credited annually against the annual payment owed by the Central Arizona Water Conservation District to the United States for the Central Arizona Project.

''(2) FURTHER USE OF REVENUE FUNDS CREDITED AGAINST PAYMENTS OF CENTRAL ARIZONA WATER CONSERVATION DISTRICT.—After being credited in accordance with paragraph (1), the funds and portion of revenues described in that paragraph shall be available annually, without further appropriation, in order of priority—

''(A) to pay annually the fixed operation, maintenance, and replacement charges associated with the delivery of Central Arizona Project water held under long-term contracts for use by Arizona Indian tribes (as defined in section 2 of the Arizona Water Settlements Act);

''(B) to make deposits, totaling $53,000,000 in the aggregate, in the Gila River Indian Community Water OM&R Trust Fund established by section 208 of the Arizona Water Settlements Act;

''(C) to pay $147,000,000 for the rehabilitation of the San Carlos Irrigation Project, of which not more than $25,000,000 shall be available annually consistent with attachment 6.5.1 of exhibit 20.1 of the Gila River agreement, except that the total amount of $147,000,000 shall be increased or decreased, as appropriate, based on ordinary fluctuations since January 1, 2000, in construction cost indices applicable to the types of construction involved in the rehabilitation;

''(D) in addition to amounts made available for the purpose through annual appropriations, as reasonably allocated by the Secretary without regard to any trust obligation on the part of the Secretary to allocate the funding under any particular priority and without regard to priority (except that payments required by clause (i) shall be made first)—

''(i) to make deposits totaling $66,000,000, adjusted to reflect changes since January 1, 2004, in the construction cost indices applicable to the types of construction involved in construction of the New Mexico Unit, into the New Mexico Unit Fund as provided by section 212(i) of the Arizona Water Settlements Act in 10 equal annual payments beginning in 2012;

''(ii) upon satisfaction of the conditions set forth in subsections (j) and (k) of section 212, to pay certain of the costs associated with construction of the New Mexico Unit, in addition to any amounts that may be expended from the New Mexico Unit Fund, in a minimum amount of $34,000,000 and a maximum amount of $62,000,000, as provided in section 212 of the Arizona Water Settlements Act, as adjusted to reflect changes since January 1, 2004, in the construction cost indices applicable to the types of construction involved in construction of the New Mexico Unit;

''(iii) to pay the costs associated with the construction of distribution systems required to implement the provisions of—

''(I) the contract entered into between the United States and the Gila River Indian Community, numbered 6–07–03–W0345, and dated July 20, 1998;

''(II) section 3707(a)(1) of the San Carlos Apache Tribe Water Rights Settlement Act of 1992 (106 Stat. 4747); and

''(III) section 304 of the Southern Arizona Water Rights Settlement Amendments Act of 2004;

''(iv) to pay $52,396,000 for the rehabilitation of the San Carlos Irrigation Project as provided in section 203(d)(4) of the Arizona Water Settlements Act, of which not more than $9,000,000 shall be available annually, except that the total amount of $52,396,000 shall be increased or decreased, as appropriate, based on ordinary fluctuations since January 1, 2000, in construction cost indices applicable to the types of construction involved in the rehabilitation;

''(v) to pay other costs specifically identified under—

''(I) sections 213(g)(1) and 214 of the Arizona Water Settlements Act; and

''(II) the Southern Arizona Water Rights Settlement Amendments Act of 2004;

''(vi) to pay a total of not more than $250,000,000 to the credit of the Future Indian Water Settlement Subaccount of the Lower Colorado Basin Development Fund, for use for Indian water rights settlements in Arizona approved by Congress after the date of enactment of the Arizona Water Settlements Act, subject to the requirement that, notwithstanding any other provision of this Act, any funds credited to the Future Indian Water Settlement Subaccount that are not used in furtherance of a congressionally approved Indian water rights settlement in Arizona by December 31, 2030, shall be returned to the main Lower Colorado Basin Development Fund for expenditure on authorized uses pursuant to this Act, provided that any interest earned on funds held in the Future Indian Water Settlement Subaccount shall remain in such subaccount until disbursed or returned in accordance with this section; and

''(vii) to pay costs associated with the installation of gages on the Gila River and its tributaries to measure the water level of the Gila River and its tributaries for purposes of the New Mexico Consumptive Use and Forbearance Agreement in an amount not to exceed $500,000;

''(E) in addition to amounts made available for the purpose through annual appropriations—

''(i) to pay the costs associated with the construction of on-reservation Central Arizona Project distribution systems for the Yavapai Apache (Camp Verde), Tohono O'odham Nation (Sif Oidak District), Pascua Yaqui, and Tonto Apache tribes; and

''(ii) to make payments to those tribes in accordance with paragraph 8(d)(i)(1)(iv) of the repayment stipulation (as defined in section 2 of the Arizona Water Settlements Act), except that if a water rights settlement Act of Congress authorizes such construction, payments to those tribes shall be made from funds in the Future Indian Water Settlement Subaccount; and

''(F) if any amounts remain in the development fund at the end of a fiscal year, to be carried over to the following fiscal year for use for the purposes described in subparagraphs (A) through (E).

''(3) REVENUE FUNDS IN EXCESS OF REVENUE FUNDS CREDITED AGAINST CENTRAL ARIZONA WATER CONSERVATION DISTRICT PAYMENTS.—The funds and portion of revenues described in paragraph (1) that are in excess of amounts credited under paragraph (1) shall be available, on an annual basis, without further appropriation, in order of priority—

''(A) to pay annually the fixed operation, maintenance and replacement charges associated with the delivery of Central Arizona Project water under long-term contracts held by Arizona Indian tribes (as defined in section 2 of the Arizona Water Settlements Act);

''(B) to make the final outstanding annual payment for the costs of each unit of the projects authorized under title III that are to be repaid by the Central Arizona Water Conservation District;

''(C) to reimburse the general fund of the Treasury for fixed operation, maintenance, and replacement charges previously paid under paragraph (2)(A);

''(D) to reimburse the general fund of the Treasury for costs previously paid under subparagraphs (B) through (E) of paragraph (2);

''(E) to pay to the general fund of the Treasury the annual installment on any debt relating to the Central Arizona Project under section 9(d) of the Reclamation Project Act of 1939 (43 U.S.C. 485h(d)), made nonreimbursable under section 106(b) of the Arizona Water Settlements Act;

''(F) to pay to the general fund of the Treasury the difference between—

''(i) the costs of each unit of the projects authorized under title III that are repayable by the Central Arizona Water Conservation District; and

''(ii) any costs allocated to reimbursable functions under any Central Arizona Project cost allocation undertaken by the United States; and

''(G) for deposit in the general fund of the Treasury.

''(4) INVESTMENT OF AMOUNTS.—

''(A) IN GENERAL.—The Secretary of the Treasury shall invest such portion of the development fund as is not, in the judgment of the Secretary of the Interior, required to meet current needs of the development fund.

''(B) PERMITTED INVESTMENTS.—

''(i) IN GENERAL.—Notwithstanding any other provision of law, including any provision requiring the consent or concurrence of any party, the investments referred to in subparagraph (A) shall include 1 or more of the following:

''(I) Any investments referred to in the Act of June 24, 1938 (25 U.S.C. 162a).

''(II) Investments in obligations of government corporations and government-sponsored entities whose charter statutes provide that their obligations are lawful investments for federally managed funds.

''(III) The obligations referred to in section 201 of the Social Security Act (42 U.S.C. 401).

''(ii) LAWFUL INVESTMENTS.—For purposes of clause (i), obligations of government corporations and government-sponsored entities whose charter statutes provide that their obligations are lawful investments for federally managed funds includes any of the following securities or securities with comparable language concerning the investment of federally managed funds:

''(I) Obligations of the United States Postal Service as authorized by section 2005 of title 39, United States Code.

''(II) Bonds and other obligations of the Tennessee Valley Authority as authorized by section 15d of the Tennessee Valley Authority Act of 1933 (16 U.S.C. 831n–4).

''(III) Mortgages, obligations, or other securities of the Federal Home Loan Mortgage Corporation as authorized by section 303 of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1452).

''(IV) Bonds, notes, or debentures of the Commodity Credit Corporation as authorized by section 4 of the Act of March 4, 1939 (15 U.S.C. 713a–4).

''(C) ACQUISITION OF OBLIGATIONS.—For the purpose of investments under subparagraph (A), obligations may be acquired—

''(i) on original issue at the issue price; or

''(ii) by purchase of outstanding obligations at the market price.

''(D) SALE OF OBLIGATIONS.—Any obligation acquired by the development fund may be sold by the Secretary of the Treasury at the market price.

''(E) CREDITS TO FUND.—The interest on, and the proceeds from the sale or redemption of, any obligations held in the development fund shall be credited to and form a part of the development fund.

''(5) AMOUNTS NOT AVAILABLE FOR CERTAIN FEDERAL OBLIGATIONS.—None of the provisions of this section, including paragraphs (2)(A) and (3)(A), shall be construed to make any of the funds referred to in this section available for the fulfillment of any Federal obligation relating to the payment of OM&R charges if such obligation is undertaken pursuant to Public Law 95–328, Public Law 98–530, or any settlement agreement with the United States (or amendments thereto) approved by or pursuant to either of those acts.''.

(b) LIMITATION.—Amounts made available under the amendment made by subsection (a)—

(1) shall be identified and retained in the Lower Colorado River Basin Development Fund established by section 403 of the Colorado River Basin Project Act (43 U.S.C. 1543); and

(2) shall not be expended or withdrawn from that fund until the later of—

(A) the date on which the findings described in section 207(c) are published in the Federal Register; or

(B) January 1, 2010.

(c) TECHNICAL AMENDMENTS.—The Colorado River Basin Project Act (43 U.S.C. 1501 et seq.) is amended—

(1) in section 403(g), by striking ''clause (c)(2)'' and inserting ''subsection (c)(2)'';

(2) by striking ''clause'' each other place it appears and inserting ''paragraph'';

(3) by striking ''clauses'' each place it appears and inserting ''paragraphs''; and

(4) in section 403(e), by deleting the first word and inserting ''Except as provided in subsection (f), revenues''.

SEC. 108. EFFECT.

Except for provisions relating to the allocation of Central Arizona Project water and the Reclamation Reform Act of 1982 (43 U.S.C. 390aa et seq.), nothing in this title affects—

(1) any treaty, law, or agreement governing the use of water from the Colorado River; or

(2) any rights to use Colorado River water existing on the date of enactment of this Act.

SEC. 109. REPEAL.

Section 11(h) of the Salt River Pima-Maricopa Indian Community Water Rights Settlement Act of 1988 (102 Stat. 2559) is repealed.

SEC. 110. AUTHORIZATION OF APPROPRIATIONS.

(a) IN GENERAL.—There are authorized to be appropriated such sums as are necessary to comply with—

(1) the 1994 biological opinion, including any funding transfers required by the opinion;

(2) the 1996 biological opinion, including any funding transfers required by the opinion; and

(3) any final biological opinion resulting from the 1999 biological opinion, including any funding transfers required by the opinion.

(b) CONSTRUCTION COSTS.—Amounts made available under subsection (a) shall be treated as Central Arizona Project construction costs.

(c) AGREEMENTS.—

(1) IN GENERAL.—Any amounts made available under subsection (a) may be used to carry out agreements to permanently fund long-term reasonable and prudent alternatives in accepted biological opinions relating to the Central Arizona Project.

(2) REQUIREMENTS.—To ensure that long-term environmental compliance may be met without further appropriations, an agreement under paragraph (1) shall include a provision requiring that the contractor manage the funds through interest-bearing investments.

SEC. 111. REPEAL ON FAILURE OF ENFORCEABILITY DATE UNDER TITLE II.

(a) IN GENERAL.—Except as provided in subsection (b), if the Secretary does not publish a statement of findings under section 207(c) by December 31, 2007—

(1) this title is repealed effective January 1, 2008, and any action taken by the Secretary and any contract entered under any provision of this title shall be void; and

(2) any amounts appropriated under section 110 that remain unexpended shall immediately revert to the general fund of the Treasury.

(b) EXCEPTION.—No subcontract amendment executed by the Secretary under the notice of June 18, 2003 (67 Fed. Reg. 36578), shall be considered to be a contract entered into by the Secretary for purposes of subsection (a)(1).

TITLE II—GILA RIVER INDIAN COMMUNITY WATER RIGHTS SETTLEMENT

SEC. 201. SHORT TITLE.

This title may be cited as the ''Gila River Indian Community Water Rights Settlement Act of 2004''.

SEC. 202. PURPOSES.

The purposes of this title are—

(1) to resolve permanently certain damage claims and all water rights claims among the United States on behalf of the Community, its members, and allottees, and the Community and its neighbors;

(2) to authorize, ratify, and confirm the Gila River agreement;

(3) to authorize and direct the Secretary to execute and perform all obligations of the Secretary under the Gila River agreement;

(4) to authorize the actions and appropriations necessary for the United States to meet obligations of the United States under the Gila River agreement and this title; and

(5) to authorize and direct the Secretary to execute the New Mexico Consumptive Use and Forbearance Agreement to allow the Secretary to exercise the rights authorized by subsections (d) and (f) of section 304 of the Colorado River Basin Project Act (43 U.S.C. 1524).

SEC. 203. APPROVAL OF THE GILA RIVER INDIAN COMMUNITY WATER RIGHTS SETTLEMENT AGREEMENT.

(a) IN GENERAL.—Except to the extent that any provision of the Gila River agreement conflicts with any provision of this title, the Gila River agreement is authorized, ratified, and confirmed. To the extent amendments are executed to make the Gila River agreement consistent with this title, such amendments are also authorized, ratified, and confirmed.

(b) EXECUTION OF AGREEMENT.—To the extent that the Gila River agreement does not conflict with this title, the Secretary is directed to and shall execute the Gila River agreement, including all exhibits to the Gila River agreement requiring the signature of the Secretary and any amendments necessary to make the Gila River agreement consistent with this title, after the Community has executed the Gila River agreement and any such amendments.

(c) NATIONAL ENVIRONMENTAL POLICY ACT.—

(1) NO MAJOR FEDERAL ACTION.—Execution of the Gila River agreement by the Secretary under this section shall not constitute a major Federal action under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(2) ENVIRONMENTAL COMPLIANCE ACTIVITIES.—The Secretary shall promptly carry out the environmental compliance activities necessary to implement the Gila River agreement, including activities under the National Environmental Policy Act of 1969 and the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.).

(3) LEAD AGENCY.—The Bureau of Reclamation shall be designated as the lead agency with respect to environmental compliance.

(d) REHABILITATION AND OPERATION, MAINTENANCE, AND REPLACEMENT OF CERTAIN WATER WORKS.—

(1) IN GENERAL.—In addition to any obligations of the Secretary with respect to the San Carlos Irrigation Project, including any operation or maintenance responsibility existing on the date of enactment of this Act, the Secretary shall—

(A) in accordance with exhibit 20.1 to the Gila River agreement, provide for the rehabilitation of the San Carlos Irrigation Project water diversion and delivery works with the funds provided for under section 403(f)(2) of the Colorado River Basin Project Act; and

(B) provide electric power for San Carlos Irrigation Project wells and irrigation pumps at the Secretary's direct cost of transmission, distribution, and administration, using the least expensive source of power available.

(2) JOINT CONTROL BOARD AGREEMENT.—

(A) IN GENERAL.—Except to the extent that it is in conflict with this title, the Secretary shall execute the joint control board agreement described in exhibit 20.1 to the Gila River agreement, including all exhibits to the joint control board agreement requiring the signature of the Secretary and any amendments necessary to the joint control board agreement consistent with this title.

(B) CONTROLS.—The joint control board agreement shall contain the following provisions, among others:

(i) The Secretary, acting through the Bureau of Indian Affairs, shall continue to be responsible for the operation and maintenance of Picacho Dam and Coolidge Dam and Reservoir, and for scheduling and delivering water to the Community and the District through the San Carlos Irrigation Project joint works.

(ii) The actions and decisions of the joint control board that pertain to construction and maintenance of those San Carlos Irrigation Project joint works that are the subject of the joint control board agreement shall be subject to the approval of the Secretary, acting through the Bureau of Indian Affairs within 30 days thereof, or sooner in emergency situations, which approval shall not be unreasonably withheld. Should a required decision of the Bureau of Indian Affairs not be received by the joint control board within 60 days following an action or decision of the joint control board, the joint control board action or decision shall be deemed to have been approved by the Secretary.

(3) REHABILITATION COSTS ALLOCABLE TO THE COMMUNITY.—The rehabilitation costs allocable to the Community under exhibit 20.1 to the Gila River agreement shall be paid from the funds available under paragraph (2)(C) of section 403(f) of the Colorado River Basin Project Act (43 U.S.C. 1543(f)) (as amended by section 107(a)).

(4) REHABILITATION COSTS NOT ALLOCABLE TO THE COMMUNITY.—

(A) IN GENERAL.—The rehabilitation costs not allocable to the Community under exhibit 20.1 to the Gila River agreement shall be provided from funds available under paragraph (2)(D)(iv) of section 403(f) of the Colorado River Basin Project Act (43 U.S.C. 1543(f)) (as amended by section 107(a)).

(B) SUPPLEMENTARY REPAYMENT CONTRACT.—Prior to the advance of any funds made available to the San Carlos Irrigation and Drainage District pursuant to the provisions of this Act, the Secretary shall execute a supplementary repayment contract with the San Carlos Irrigation and Drainage District in the form provided for in exhibit 20.1 to the Gila River agreement which shall, among other things, provide that—

(i) in accomplishing the work under the supplemental repayment contract, the San Carlos Irrigation and Drainage District may use locally accepted engineering standards and the labor and contracting authorities that are available to the District under State law;

(ii) up to 18,000 acre-feet annually of conserved water will be made available by the San

Carlos Irrigation and Drainage District to the United States pursuant to the terms of exhibit 20.1 to the Gila River agreement; and

(iii) a portion of the San Carlos Irrigation and Drainage District's share of the rehabilitation costs specified in exhibit 20.1 to the Gila River agreement shall be nonreimbursable.

(5) LEAD AGENCY.—The Bureau of Reclamation shall be designated as the lead agency for oversight of the construction and rehabilitation of the San Carlos Irrigation Project authorized by this section.

(6) FINANCIAL RESPONSIBILITY.—Except as expressly provided by this section, nothing in this Act shall affect—

(A) any responsibility of the Secretary under the provisions of the Act of June 7, 1924 (commonly known as the ''San Carlos Irrigation Project Act of 1924'') (43 Stat. 475); or

(B) any other financial responsibility of the Secretary relating to operation and maintenance of the San Carlos Irrigation Project existing on the date of enactment of this Act.

SEC. 204. WATER RIGHTS.

(a) RIGHTS HELD IN TRUST; ALLOTTEES.—

(1) INTENT OF CONGRESS.—It is the intent of Congress to provide allottees with benefits that are equal to or that exceed the benefits that the allottees currently possess, taking into account—

(A) the potential risks, cost, and time delay associated with the litigation that will be resolved by the Gila River agreement;

(B) the availability of funding under title I for the rehabilitation of the San Carlos Irrigation Project and for other benefits;

(C) the availability of water from the CAP system and other sources after the enforceability date, which will supplement less secure existing water supplies; and

(D) the applicability of section 7 of the Act of February 8, 1887 (25 U.S.C. 381), and this title to protect the interests of allottees.

(2) HOLDING IN TRUST.—The water rights and resources described in the Gila River agreement shall be held in trust by the United States on behalf of the Community and the allottees as described in this section.

(3) ALLOTTED LAND.—As specified in and provided for under this Act—

(A) agricultural allottees, other than allottees with rights under the Globe Equity Decree, shall be entitled to a just and equitable allocation of water from the Community for irrigation purposes from the water resources described in the Gila River agreement;

(B) allotted land with rights under the Globe Equity Decree shall be entitled to receive—

(i) a similar quantity of water from the Community to the quantity historically delivered under the Globe Equity Decree; and

(ii) the benefit of the rehabilitation of the San Carlos Irrigation Project as provided in this Act, a more secure source of water, and other benefits under this Act;

(C) the water rights and resources and other benefits provided by this Act are a complete substitution of any rights that may have been held by, or any claims that may have been asserted by, the allottees before the date of enactment of this Act for land within the exterior boundaries of the Reservation;

(D) any entitlement to water of allottees for land located within the exterior boundaries of the Reservation shall be satisfied by the Community using the water resources described in subparagraph 4.1 in the Gila River agreement;

(E) before asserting any claim against the United States under section 1491(a) of title 28, United States Code, or under section 7 of the Act of February 8, 1887 (25 U.S.C. 381), an allottee shall first exhaust remedies available to the allottee under the Community's water code and Community law; and

(F) following exhaustion of remedies on claims relating to section 7 of the Act of February 8, 1887 (25 U.S.C. 381), a claimant may petition the Secretary for relief.

(4) ACTIONS, CLAIMS, AND LAWSUITS.—

(A) IN GENERAL.—Nothing in this Act authorizes any action, claim, or lawsuit by an allottee against any person, entity, corporation, or municipal corporation, under Federal, State, or other law.

(B) THE COMMUNITY AND THE UNITED STATES.—Except as provided in subparagraphs (E) and (F) of paragraph (3) and subsection (e)(2)(C), nothing in this Act either authorizes any action, claim, or lawsuit by an allottee against the Community or the United States under Federal, State, or other law, or alters available actions pursuant to section 1491(a) of title 28, of the United States Code, or section 381 of title 25, of the United States Code.

(b) REALLOCATION.—

(1) IN GENERAL.—In accordance with this title and the Gila River agreement, the Secretary shall reallocate and contract with the Community for the delivery in accordance with this section of—

(A) an annual entitlement to 18,600 acre-feet of CAP agricultural priority water in accordance with the agreement among the Secretary, the Community, and Roosevelt Water Conservation District dated August 7, 1992;

(B) an annual entitlement to 18,100 acre-feet of CAP Indian priority water, which was permanently relinquished by Harquahala Valley Irrigation District in accordance with Contract No. 3–0907–0930–09W0290 among the Central Arizona Water Conservation District, the Harquahala Valley Irrigation District, and the United States, and converted to CAP Indian priority water under the Fort McDowell Indian Community Water Rights Settlement Act of 1990 (104 Stat. 4480);

(C) on execution of an exchange and lease agreement among the Community, the United States, and Asarco, an annual entitlement of up to 17,000 acre-feet of CAP municipal and industrial priority water under the subcontract among the United States, the Central Arizona Water Conservation District, and Asarco, Subcontract No. 3–07–30–W0307, dated November 7, 1993; and

(D) as provided in section 104(a)(1)(A)(i), an annual entitlement to 102,000 acre-feet of CAP agricultural priority water acquired pursuant to the master agreement.

(2) SOLE AUTHORITY.—In accordance with this section, the Community shall have the sole authority, subject to the Secretary's approval pursuant to section 205(a)(2), to lease, distribute, exchange, or allocate the CAP water described in this subsection, except that this paragraph shall not impair the right of an allottee to lease land of the allottee together with the water rights appurtenant to the land. Nothing in this paragraph shall affect the validity of any lease or exchange ratified in section 205(c) or 205(d).

(c) WATER SERVICE CAPITAL CHARGES.—The Community shall not be responsible for water service capital charges for CAP water.

(d) ALLOCATION AND REPAYMENT.—For the purpose of determining the allocation and repayment of costs of any stages of the Central Arizona Project constructed after the date of enactment of this Act, the costs associated with the delivery of water described in subsection (b), whether that water is delivered for use by the Community or in accordance with any assignment, exchange, lease, option to lease, or other agreement for the temporary disposition of water entered into by the Community—

(1) shall be nonreimbursable; and

(2) shall be excluded from the repayment obligation of the Central Arizona Water Conservation District.

(e) APPLICATION OF PROVISIONS.—

(1) IN GENERAL.—The water rights recognized and confirmed to the Community and allottees by the Gila River agreement and this title shall be subject to section 7 of the Act of February 8, 1887 (25 U.S.C. 381).

(2) WATER CODE.—

(A) IN GENERAL.—Not later than 18 months after the enforceability date, the Community shall enact a water code, subject to any applicable provision of law (including subsection (a)(3)), that—

(i) manages, regulates, and controls the water resources on the Reservation;

(ii) governs all of the water rights that are held in trust by the United States; and

(iii) provides that, subject to approval of the Secretary—

(I) the Community shall manage, regulate, and control the water resources described in the Gila River agreement and allocate water to all water users on the Reservation pursuant to the water code;

(II) the Community shall establish conditions, limitations, and permit requirements relating to the storage, recovery, and use of the water resources described in the Gila River agreement;

(III) any allocation of water shall be from the pooled water resources described in the Gila River agreement;

(IV) charges for delivery of water for irrigation purposes to water users on the Reservation (including water users on allotted land) shall be assessed on a just and equitable basis without regard to the status of the Reservation land on which the water is used;

(V) there is a process by which any user of or applicant to use water for irrigation purposes (including water users on allotted land) may request that the Community provide water for irrigation use in accordance with this title;

(VI) there is a due process system for the consideration and determination by the Community of any request by any water user on the Reservation (including water users on allotted land), for an allocation of water, including a process for appeal and adjudication of denied or disputed distributions of water and for resolution of contested administrative decisions; and

(VII) there is a requirement that any allottee with a claim relating to the enforcement of rights of the allottee under the water code or relating to the amount of water allocated to land of the allottee must first exhaust remedies available to the allottee under Community law and the water code before initiating an action against the United States or petitioning the Secretary pursuant to subsection (a)(3)(F).

(B) APPROVAL.—Any provision of the water code and any amendments to the water code that affect the rights of the allottees shall be subject to the approval of the Secretary, and no such provision or amendment shall be valid until approved by the Secretary.

(C) INCLUSION OF REQUIREMENT IN WATER CODE.—The Community is authorized to and shall include in the water code the requirement in subparagraph (A)(VII) that any allottee with a claim relating to the enforcement of rights of the allottee under the water code or relating to the amount of water allocated to land of the allottee must first exhaust remedies available to the allottee under Community law and the water code before initiating an action against the United States.

(3) ADMINISTRATION.—The Secretary shall administer all rights to water granted or confirmed to the Community and allottees by the Gila River agreement and this Act until such date as the water code described in paragraph (2) has been enacted and approved by the Secretary, at which time the Community shall have authority, subject to the Secretary's authority under section 7 of the Act of February 8, 1887 (25 U.S.C. 381), to manage, regulate, and control the water resources described in the Gila River agreement, subject to paragraph (2), except that this paragraph shall not impair the right of an allottee to lease land of the allottee together with the water rights appurtenant to the land.

SEC. 205. COMMUNITY WATER DELIVERY CONTRACT AMENDMENTS.

(a) IN GENERAL.—The Secretary shall amend the Community water delivery contract to provide, among other things, in accordance with the Gila River agreement, that—

(1) the contract shall be—

(A) for permanent service (as that term is used in section 5 of the Boulder Canyon Project Act (43 U.S.C. 617d)); and

(B) without limit as to term;

(2) the Community may, with the approval of the Secretary, including approval as to the Secretary's authority under section 7 of the Act of February 8, 1887 (25 U.S.C. 381)—

(A) enter into contracts or options to lease (for a term not to exceed 100 years) or contracts or options to exchange, Community CAP water within Maricopa, Pinal, Pima, La Paz, Yavapai, Gila, Graham, Greenlee, Santa Cruz, or Coconino Counties, Arizona, providing for the temporary delivery to others of any portion of the Community CAP water; and

(B) renegotiate any lease at any time during the term of the lease, so long as the term of the renegotiated lease does not exceed 100 years;

(3)(A) the Community, and not the United States, shall be entitled to all consideration due to the Community under any leases or options to lease and exchanges or options to exchange Community CAP water entered into by the Community; and

(B) the United States shall have no trust obligation or other obligation to monitor, administer, or account for—

(i) any funds received by the Community as consideration under any such leases or options to lease and exchanges or options to exchange; or

(ii) the expenditure of such funds;

(4)(A) all Community CAP water shall be delivered through the CAP system; and

(B) if the delivery capacity of the CAP system is significantly reduced or is anticipated to be significantly reduced for an extended period of time, the Community shall have the same CAP delivery rights as other CAP contractors and CAP subcontractors, if such CAP contractors or CAP subcontractors are allowed to take delivery of water other than through the CAP system;

(5) the Community may use Community CAP water on or off the Reservation for Community purposes;

(6) as authorized by subparagraph (A) of section 403(f)(2) of the Colorado River Basin Project Act (43 U.S.C. 1543(f)(2)) (as amended by section 107(a)) and to the extent that funds are available in the Lower Colorado River Basin Development Fund established by section 403 of that Act (43 U.S.C. 1543), the United States shall pay to the CAP operating agency the fixed OM&R charges associated with the delivery of Community CAP water, except for Community CAP water leased by others;

(7) the costs associated with the construction of the CAP system allocable to the Community—

(A) shall be nonreimbursable; and

(B) shall be excluded from any repayment obligation of the Community; and

(8) no CAP water service capital charges shall be due or payable for Community CAP water, whether CAP water is delivered for use by the Community or is delivered under any leases, options to lease, exchanges or options to exchange Community CAP water entered into by the Community.

(b) AMENDED AND RESTATED COMMUNITY WATER DELIVERY CONTRACT.—To the extent it is not in conflict with the provisions of this Act, the Amended and Restated Community CAP Water Delivery Contract set forth in exhibit 8.2 to the Gila River agreement is authorized, ratified, and confirmed, and the Secretary is directed to and shall execute the contract. To the extent amendments are executed to make the Amended and Restated Community CAP Water Delivery Contract consistent with this title, such amendments are also authorized, ratified, and confirmed.

(c) LEASES.—To the extent they are not in conflict with the provisions of this Act, the leases of Community CAP water by the Community to Phelps Dodge, and any of the Cities, attached as exhibits to the Gila River agreement, are authorized, ratified, and confirmed, and the Secretary is directed to and shall execute the leases. To the extent amendments are executed to make such leases consistent with this title, such amendments are also authorized, ratified, and confirmed.

(d) RECLAIMED WATER EXCHANGE AGREEMENT.—To the extent it is not in conflict with the provisions of this Act, the Reclaimed Water Exchange Agreement among the cities of Chandler and Mesa, Arizona, the Community, and the United States, attached as exhibit 18.1 to the Gila River agreement, is authorized, ratified, and confirmed, and the Secretary shall execute the agreement. To the extent amendments are executed to make the Reclaimed Water Exchange Agreement consistent with this title, such amendments are also authorized, ratified, and confirmed.

(e) PAYMENT OF CHARGES.—Neither the Community nor any recipient of Community CAP water through lease or exchange shall be obligated to pay water service capital charges or any other charges, payments, or fees for the CAP water, except as provided in the lease or exchange agreement.

(f) PROHIBITIONS.—

(1) USE OUTSIDE THE STATE.—None of the Community CAP water shall be leased, exchanged, forborne, or otherwise transferred in any way by the Community for use directly or indirectly outside the State.

(2) USE OFF RESERVATION.—Except as authorized by this section and subparagraph 4.7 of the Gila River agreement, no water made available to the Community under the Gila River agreement, the Globe Equity Decree, the Haggard Decree, or this title may be sold, leased, transferred, or used off the Reservation other than by exchange.

(3) AGREEMENTS WITH THE ARIZONA WATER BANKING AUTHORITY.—Nothing in this Act or the Gila River agreement limits the right of the Community to enter into any agreement with the Arizona Water Banking Authority, or any successor agency or entity, in accordance with State law.

SEC. 206. SATISFACTION OF CLAIMS.

(a) IN GENERAL.—The benefits realized by the Community, Community members, and allottees under this title shall be in complete replacement of and substitution for, and full satisfaction of, all claims of the Community, Community members, and allottees for water rights, injury to water rights, injury to water quality and subsidence damage, except as set forth in the Gila River agreement, under Federal, State, or other law with respect to land within the exterior boundaries of the Reservation, off-Reservation trust land, and fee land.

(b) NO RECOGNITION OF WATER RIGHTS.—Notwithstanding subsection (a) and except as provided in section 204(a), nothing in this title has the effect of recognizing or establishing any right of a Community member or allottee to water on the Reservation.

SEC. 207. WAIVER AND RELEASE OF CLAIMS.

(a) IN GENERAL.—

(1) CLAIMS AGAINST THE STATE AND OTHERS.—

(A) CLAIMS FOR WATER RIGHTS AND INJURY TO WATER RIGHTS BY THE COMMUNITY AND THE UNITED STATES ON BEHALF OF THE COMMUNITY.—Except as provided in subparagraph 25.12 of the Gila River agreement, the Community, on behalf of the Community and Community members (but not members in their capacities as allottees), and the United States, on behalf of the Community and Community members (but not members in their capacities as allottees), as part of the performance of their obligations under the Gila River agreement, are authorized to execute a waiver and release of any claims against the State (or any agency or political subdivision of the State) or any other person, entity, corporation, or municipal corporation under Federal, State, or other law for—

(i)(I) past, present, and future claims for water rights for land within the exterior boundaries of the Reservation, off-Reservation trust land, and fee land arising from time immemorial and, thereafter, forever; and

(II) past, present, and future claims for water rights arising from time immemorial and, thereafter, forever, that are based on aboriginal occupancy of land by the Community and Community members, or their predecessors;

(ii)(I) past and present claims for injury to water rights for land within the exterior boundaries of the Reservation, off-Reservation trust land, and fee land arising from time immemorial through the enforceability date;

(II) past, present, and future claims for injury to water rights arising from time immemorial and, thereafter, forever, that are based on aboriginal occupancy of land by the Community and Community members, or their predecessors; and

(III) claims for injury to water rights arising after the enforceability date for land within the exterior boundaries of the Reservation, off-Reservation trust land, and fee land resulting from the off-Reservation diversion or use of water in a manner not in violation of the Gila River agreement or State law;

(iii) past, present, and future claims arising out of or relating in any manner to the negotiation or execution of the Gila River agreement or the negotiation or enactment of titles I and II; and

(iv)(I) past and present claims for subsidence damage occurring to land within the exterior boundaries of the Reservation, off-Reservation trust land, or fee land arising from time immemorial through the enforceability date; and

(II) claims for subsidence damage arising after the enforceability date occurring to land within the exterior boundaries of the Reservation, off-Reservation trust land, or fee land resulting from the diversion of underground water in a manner not in violation of the Gila River agreement or State law.

(B) CLAIMS FOR WATER RIGHTS AND INJURY TO WATER RIGHTS BY THE UNITED STATES AS TRUSTEE FOR THE ALLOTTEES.—Except as provided in subparagraph 25.12 of the Gila River agreement, the United States, as trustee for the allottees, as part of the performance of its obligations under the Gila River agreement, is authorized to execute a waiver and release of any claims against the State (or any agency or political subdivision of the State) or any other person, entity, corporation, or municipal corporation under Federal, State, or other law, for—

(i)(I) past, present, and future claims for water rights for land within the exterior boundaries of the Reservation arising from time immemorial and, thereafter, forever; and

(II) past, present, and future claims for water rights arising from time immemorial and, thereafter, forever, that are based on aboriginal occupancy of land by allottees, or their predecessors;

(ii)(I) past and present claims for injury to water rights for land within the exterior boundaries of the Reservation arising from time immemorial through the enforceability date;

(II) past, present, and future claims for injury to water rights arising from time immemorial and, thereafter, forever, that are based on aboriginal occupancy of land by allottees or their predecessors; and

(III) claims for injury to water rights arising after the enforceability date for land within the exterior boundaries of the Reservation resulting from the off-Reservation diversion or use of water in a manner not in violation of the Gila River agreement or State law;

(iii) past, present, and future claims arising out of or relating in any manner to the negotiation or execution of the Gila River agreement or the negotiation or enactment of titles I and II; and

(iv) past and present claims for subsidence damage occurring to land within the exterior boundaries of the Reservation arising from time immemorial through the enforceability date.

(C) CLAIMS FOR INJURY TO WATER QUALITY BY THE COMMUNITY.—Except as provided in subparagraph 25.12 of the Gila River agreement, the Community, on behalf of the Community and Community members (but not members in their capacities as allottees), as part of the performance of its obligations under the Gila River agreement, is authorized to execute a waiver and release of any claims, and to agree to waive its right to request the United States to bring any claims, against the State (or any agency or political subdivision of the State) or any other person, entity, corporation, or municipal corporation under Federal, State, or other law for—

(i) past and present claims for injury to water quality (other than claims arising out of the actions that resulted in the remediations described in exhibit 25.4.1.1 to the Gila River agreement), including claims for trespass, nuisance, and real property damage and claims under all current and future Federal, State, and other environmental laws and regulations, including claims under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.) and the Arizona Water Quality Assurance Revolving Fund (Ariz. Rev. Stat. 49–281 et seq. as amended) arising from time immemorial through December 31, 2002, for land within the exterior boundaries of the Reservation, off-Reservation trust land, and fee land;

(ii) past, present, and future claims for injury to water quality (other than claims arising out of actions that resulted in the remediations described in exhibit 25.4.1.1 to the Gila River agreement), including claims for trespass, nuisance, and real property damage and claims under all current and future Federal, State, and other environmental laws and regulations, including claims under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.) and the Arizona Water Quality Assurance Revolving Fund (Ariz. Rev. Stat. 49–281 et seq.), arising from time immemorial and, thereafter, forever, that are based on aboriginal occupancy of land by the Community and Community members, or their predecessors;

(iii) claims for injury to water quality (other than claims arising out of actions that resulted in the remediations described in exhibit 25.4.1.1 to the Gila River agreement) arising after December 31, 2002, including claims for trespass, nuisance, and real property damage and claims under all current and future Federal, State, and other environmental laws and regulations, including claims under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.) and the Arizona Water Quality Assurance Revolving Fund (Ariz. Rev. Stat. 49–9281 et seq.), that result from—

(I) the delivery of water to the Community;

(II) the off-Reservation diversion (other than pumping), or ownership or operation of structures for the off-Reservation diversion (other than pumping), of water;

(III) the off-Reservation pumping, or ownership or operation of structures for the off-Reservation pumping, of water in a manner not in violation of the Gila River agreement or of any applicable pumping limitations under State law;

(IV) the recharge, or ownership or operation of structures for the recharge, of water under a State permit; and

(V) the off-Reservation application of water to land for irrigation,

except that the waiver provided in this clause shall extend only to the State (or any agency or political subdivision of the State) or any other person, entity, or municipal or other corporation to the extent that the person, entity, or corporation is engaged in an activity specified in this clause.

(D) PAST AND PRESENT CLAIMS FOR INJURY TO WATER QUALITY BY THE UNITED STATES.—Except as provided in subparagraph 25.12 of the Gila River agreement and except for any claims arising out of the actions that resulted in the remediations described in exhibit 25.4.1.1 to the Gila River agreement, the United States, acting as trustee for the Community, Community members and allottees, and as part of the performance of its obligations under the Gila River agreement, to the extent consistent with this section, is authorized to execute a waiver and release of any claims arising from time immemorial through December 31, 2002, for injury to water quality where all of the following conditions are met:

(i) The claims are brought solely on behalf of the Community, members, or allottees.

(ii) The claims are brought against the State (or any agency or political subdivision of the State) or any person, entity, corporation, or municipal corporation.

(iii) The claims arise under Federal, State, or other law, including claims, if any, for trespass, nuisance, and real property damage, and claims, if any, under any current or future Federal, State, or other environmental laws or regulation, including under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.) or the Arizona Water Quality Assurance Revolving Fund (Ariz. Rev. Stat. 49–281 et seq.).

(iv) The claimed injury is to land, water, or natural resources located on trust land within the exterior boundaries of the Reservation or on off-Reservation trust land.

(E) FUTURE CLAIMS FOR INJURY TO WATER QUALITY BY THE UNITED STATES.—Except as provided in subparagraph 25.12 of the Gila River agreement and except for any claims arising out of the actions that resulted in the remediations described in exhibit 25.4.1.1 to the Gila River agreement, the United States, in its own right and as trustee for the Community, its members and allottees, as part of the performance of its obligations under the Gila River agreement, to the extent consistent with this section, is authorized to execute a waiver and release of the following claims for injury or threat of injury to water quality arising after December 31, 2002, against the State (or any agency or political subdivision of the State) or any other person, entity, corporation, or municipal corporation under Federal, State, or other law:

(i) All common law claims for injury or threat of injury to water quality where the injury or threat of injury asserted is to the Community's, Community members' or allottees' interests in trust land, water, or natural resources located within the exterior boundaries of the Reservation or within off-Reservation trust lands caused by—

(I) the delivery of water to the Community;

(II) the off-Reservation diversion (other than pumping), or ownership or operation of structures for the off-Reservation diversion (other than pumping), of water;

(III) the off-Reservation pumping, or ownership or operation of structures for the off-Reservation pumping, of water in a manner not in violation of the Gila River agreement or of any applicable pumping limitations under State law;

(IV) the recharge, or ownership or operation of structures for the recharge, of water under a State permit; and

(V) the off-Reservation application of water to land for irrigation.

(ii) All natural resource damage claims for injury or threat of injury to water quality where the United States, through the Secretary of the Interior or other designated officials, would act on behalf of the Community, its members or allottees as a natural resource trustee pursuant to the National Contingency Plan, (as currently set forth in section 300.600(b)(2) of title 40, Code of Federal Regulations, or as it may hereafter be amended), and where the claim is based on injury to natural resources or threat of injury to natural resources within the exterior boundaries of the Reservation or off-Reservation trust lands, caused by—

(I) the delivery of water to the Community;

(II) the off-Reservation diversion (other than pumping), or ownership or operation of structures for the off-Reservation diversion (other than pumping), of water;

(III) the off-Reservation pumping, or ownership or operation of structures for the off-Reservation pumping, of water in a manner not in violation of the Gila River agreement or of any applicable pumping limitations under State law;

(IV) the recharge, or ownership or operation of structures for the recharge, of water under a State permit; and

(V) the off-Reservation application of water to land for irrigation.

(F) CLAIMS BY THE COMMUNITY AGAINST THE SALT RIVER PROJECT.—

(i) IN GENERAL.—Except as provided in subparagraph 25.12 of the Gila River agreement, to the extent consistent with this section, the Community, on behalf of the Community and Community members (but not members in their capacities as allottees), as part of the performance of its obligations under the Gila River agreement, is authorized to execute a waiver and release of claims against the Salt River Project (or its successors or assigns or its officers, governors, directors, employees, agents, or shareholders), where all of the following conditions are met:

(I) The claims are brought solely on behalf of the Community or its, members.

(II) The claims arise from the discharge, transportation, seepage, or other movement of water in, through, or from drains, canals, or other facilities or land in the Salt River Reservoir District to trust land located within the exterior boundaries of the Reservation.

(III) The claims arise from time immemorial through the enforceability date.

(IV) The claims assert a past or present injury to water rights, injury on the Reservation to water quality, or injury to trust property located within the exterior boundaries of the Reservation.

(ii) EFFECT OF WAIVER.—The waiver provided for in this subparagraph is effective as of December 31, 2002, and shall continue to preclude claims as they may arise until the enforceability date, or until such time as the Salt River Project alters its historical operations of the drains, canals, or other facilities within the Salt River Reservoir District in a manner that would cause significant harm to trust lands within the exterior boundaries of the Reservation, whichever occurs earlier.

(G) CLAIMS BY THE UNITED STATES AGAINST THE SALT RIVER PROJECT.—

(i) IN GENERAL.—Except as provided in subparagraph 25.12 of the Gila River agreement, to the extent consistent with this section, the United States, acting as trustee for the Community, Community members and allottees, and as part of the performance of its obligations under the Gila River agreement, is authorized to execute a waiver and release of claims against the Salt River Project (or its successors or assigns or its officers, governors, directors, employees, agents, or shareholders), where all of the following conditions are met:

(I) The claims are brought solely on behalf of the Community, members, or allottees.

(II) The claims arise from the discharge, transportation, seepage, or other movement of water in, through, or from drains, canals, or other facilities or land in the Salt River Reservoir District to trust land located within the exterior boundaries of the Reservation.

(III) The claims arise from time immemorial through the enforceability date.

(IV) The claims assert a past or present injury to water rights, injury on the Reservation to water quality, or injury to trust property located within the exterior boundaries of the Reservation.

(ii) EFFECT OF WAIVER.—The waiver provided for in this subsection is effective as of December 31, 2002, and shall continue to preclude claims as they may arise until the enforceability date,

or until such time as the Salt River Project alters its historical operations of the drains, canals, or other facilities within the Salt River Reservoir District in a manner that would cause significant harm to trust lands within the exterior boundaries of the Reservation, whichever occurs earlier.

(H) UNITED STATES ENFORCEMENT AUTHORITY.—Except as provided in subparagraphs (D), (E), and (G), nothing in this Act or the Gila River agreement affects any right of the United States, or the State, to take any action, including environmental actions, under any laws (including regulations and the common law) relating to human health, safety, or the environment.

(2) CLAIMS FOR SUBSIDENCE BY THE COMMUNITY, ALLOTTEES, AND THE UNITED STATES ON BEHALF OF THE COMMUNITY AND ALLOTTEES.—In accordance with the subsidence remediation program under section 209, the Community, a Community member, or an allottee, and the United States, on behalf of the Community, a Community member, or an allottee, as part of the performance of obligations under the Gila River agreement, are authorized to execute a waiver and release of all claims against the State (or any agency or political subdivision of the State) or any other person, entity, corporation or municipal corporation under Federal, State, or other law for the damage claimed.

(3) CLAIMS AGAINST THE COMMUNITY.—

(A) IN GENERAL.—Except as provided in subparagraph 25.12 of the Gila River agreement, to the extent consistent with this Act, the United States, in all its capacities (except as trustee for an Indian tribe other than the Community), as part of the performance of obligations under the Gila River agreement, is authorized to execute a waiver and release of any and all claims against the Community, or any agency, official, or employee of the Community, under Federal, State, or any other law for—

(i) past and present claims for subsidence damage to trust land within the exterior boundaries of the Reservation, off-Reservation trust lands, and fee land arising from time immemorial through the enforceability date; and

(ii) past, present, and future claims arising out of or relating in any manner to the negotiation or execution of the Gila River agreement or the negotiation or enactment of titles I and II.

(4) CLAIMS AGAINST THE UNITED STATES.—

(A) IN GENERAL.—Except as provided in subparagraph 25.12 of the Gila River agreement, the Community, on behalf of the Community and Community members (but not members in their capacities as allottees), as part of the performance of obligations under the Gila River agreement, is authorized to execute a waiver and release of any claim against the United States (or agencies, officials, or employees of the United States) under Federal, State, or other law for—

(i)(I) past, present, and future claims for water rights for land within the exterior boundaries of the Reservation, off-Reservation trust land, and fee land arising from time immemorial and, thereafter, forever; and

(II) past, present, and future claims for water rights arising from time immemorial and, thereafter, forever, that are based on aboriginal occupancy of land by the Community and Community members, or their predecessors;

(ii)(I) past and present claims for injury to water rights for land within the exterior boundaries of the Reservation, off-Reservation trust land, and fee land arising from time immemorial through the enforceability date;

(II) past, present, and future claims for injury to water rights arising from time immemorial and, thereafter, forever, that are based on aboriginal occupancy of land by the Community and Community members, or their predecessors; and

(III) claims for injury to water rights arising after the enforceability date for land within the exterior boundaries of the Reservation, off-Reservation trust land, or fee land resulting from the off-Reservation diversion or use of water in a manner not in violation of the Gila River agreement or applicable law;

(iii) past, present, and future claims arising out of or relating in any manner to the negotiation or execution of the Gila River agreement or the negotiation or enactment of titles I and II;

(iv)(I) past and present claims for subsidence damage occurring to land within the exterior boundaries of the Reservation, off-Reservation trust land, or fee land arising from time immemorial through the enforceability date; and

(II) claims for subsidence damage arising after the enforceability date occurring to land within the exterior boundaries of the Reservation, off-Reservation trust land or fee land resulting from the diversion of underground water in a manner not in violation of the Gila River agreement or applicable law; and

(v) past and present claims for failure to protect, acquire, or develop water rights for or on behalf of the Community and Community members arising before December 31, 2002.

(B) EXHAUSTION OF REMEDIES.—To the extent that members in their capacity as allottees assert that this title impairs or alters their present or future claims to water or constitutes an injury to present or future water rights, the members shall be required to exhaust their remedies pursuant to the tribal water code prior to asserting claims against the United States.

(5) CLAIMS AGAINST CERTAIN PERSONS AND ENTITIES IN THE UPPER GILA VALLEY.—

(A) BY THE COMMUNITY AND THE UNITED STATES.—Except as provided in the UVD agreement, the Community, on behalf of the Community and Community members (but not members in their capacities as allottees), and the United States on behalf of the Community and Community members (but not members in their capacities as allottees), are authorized, as part of the performance of obligations under the UVD agreement, to execute a waiver and release of the following claims against the UV signatories and the UV Non-signatories (and the predecessors in interest of each) for—

(i)(I) past, present, and future claims for water rights for land within the exterior boundaries of the Reservation and the San Carlos Irrigation Project arising from time immemorial and, thereafter, forever; and

(II) past, present, and future claims for water rights arising from time immemorial and, thereafter, forever, that are based on aboriginal occupancy of land by the Community, Community members, or predecessors of the Community or Community members;

(ii)(I) past, present, and future claims for water rights for land within the exterior boundaries of the Reservation or the San Carlos Irrigation Project arising from time immemorial and, thereafter, forever;

(II) past, present, and future claims for injury to water rights arising from time immemorial and, thereafter, forever, that are based on aboriginal occupancy of land by the Community, Community members, or predecessors of Community members, for so long as and to the extent that any individual beneficiary of such waiver is acting in a manner that is consistent with and not in violation of or contrary to the terms, conditions, requirements, limitations, or other provisions of the UVD agreement;

(III) claims for injury to water rights arising after the enforceability date for land within the exterior boundaries of the Reservation and the San Carlos Irrigation Project, resulting from the diversion, pumping, or use of water in a manner that is consistent with and not in violation of or contrary to the terms, conditions, limitations, requirements, or provisions of the UVD agreement; and

(IV) claims for injury to water rights arising after the enforceability date for water rights transferred to the Project pursuant to section 211 resulting from the diversion, pumping or use of water in a manner that is consistent with and not in violation of or contrary to the terms, conditions, limitations, requirements, or provisions of the UVD agreement;

(iii)(I) past, present, and future claims arising out of or relating to the use of water rights appurtenant to New Mexico 381 acres, on the conditions that such water rights remain subject to the oversight and reporting requirements set forth in the decree in Arizona v. California, 376 U.S. 340 (1964), and that the State of New Mexico shall make available on request a copy of any records prepared pursuant to that decree; and

(II) past, present, and future claims arising out of and relating to the use of water rights for New Mexico domestic purposes, on the conditions that such water rights remain subject to the oversight and reporting requirements set forth in the decree in Arizona v. California, 376 U.S. 340 (1964), and that the State of New Mexico shall make available on request a copy of any records prepared pursuant to that decree; and

(iv) past, present, and future claims arising out of or relating to the negotiation or execution of the UVD agreement, or the negotiation or enactment of titles I and II.

(B) BY THE UNITED STATES ON BEHALF OF ALLOTTEES.—Except as provided in the UVD agreement, to the extent consistent with this section, the United States as trustee for the allottees, as part of the performance under the UVD agreement, is authorized to execute a waiver and release of the following claims under Federal, State, or other law against the UV signatories and the UV Non-signatories (and the predecessors in interest of each) for—

(i)(I) past, present, and future claims for water rights for land within the exterior boundaries of the Reservation arising from time immemorial, and thereafter, forever; and

(II) past, present, and future claims for water rights arising from time immemorial and, thereafter, forever, that are based on aboriginal occupancy of lands by allottees or their predecessors;

(ii)(I) past and present claims for injury to water rights for lands within the exterior boundaries of the Reservation arising from time immemorial, through the enforceability date, for so long as and to the extent that any individual beneficiary of such waiver is acting in a manner that is consistent with and not in violation of or contrary to the terms, conditions, requirements, limitations, or other provisions of the UVD agreement;

(II) past, present, and future claims for injury to water rights arising from time immemorial and, thereafter, forever, that are based on aboriginal occupancy of lands by allottees or their predecessors, for so long as and to the extent that any individual beneficiary of such waiver is acting in a manner that is consistent with and not in violation of or contrary to the terms, conditions, requirements, limitations, or other provisions of the UVD agreement; and

(III) claims for injury to water rights for land within the exterior boundaries of the Reservation arising after the enforceability date resulting from the diversion, pumping, or use of water in a manner that is consistent with and not in violation of or contrary to the terms, conditions, limitations, requirements, or provisions of the UVD agreement;

(iii)(I) past, present, and future claims arising out of or relating to the use of water rights appurtenant to New Mexico 381 acres, on the conditions that such water rights remain subject to the oversight and reporting requirements set forth in the decree in Arizona v. California, 376 U.S. 340 (1964), as supplemented, and that the State of New Mexico shall make available on request a copy of any records prepared pursuant to that decree; and

(II) past, present, and future claims arising out of or relating to the use of water rights for New Mexico domestic purposes, on the conditions that such water rights remain subject to the oversight and reporting requirements set forth in the decree in Arizona v. California, 376

U.S. 340 (1964), as supplemented, and that the State of New Mexico shall make available on request a copy of any records prepared pursuant to that decree; and

(iv) past, present, and future claims arising out of or relating to the negotiation or execution of the UVD agreement, or the negotiation or enactment of titles I and II.

(C) ADDITIONAL WAIVER OF CERTAIN CLAIMS BY THE UNITED STATES.—Except as provided in the UVD Agreement, the United States (to the extent the waiver and release authorized by this subparagraph is not duplicative of the waiver and release provided in subparagraph (B) and the extent the United States holds legal title to the water rights as described in article V or VI of the Globe Equity Decree on behalf of lands within the San Carlos Irrigation and Drainage District and the Miscellaneous Flow Lands) shall execute a waiver and release of the following claims under Federal, State or other law against the UV signatories and the UV Non-signatories (and the predecessors of each) for—

(i) past, present, and future claims for water rights for land within the San Carlos Irrigation and Drainage District and the Miscellaneous Flow Lands arising from time immemorial, and thereafter, forever;

(ii)(I) past and present claims for injury to water rights for land within the San Carlos Irrigation and Drainage District and the Miscellaneous Flow Lands arising from time immemorial through the enforceability date, for so long as and to the extent that any individual beneficiary of such waiver is acting in a manner that is consistent with and not in violation of or contrary to the terms, conditions, requirements, limitations, or other provisions of the UVD agreement;

(II) claims for injury to water rights arising after the enforceability date for land within the San Carlos Irrigation and Drainage District and the Miscellaneous Flow Lands resulting from the diversion, pumping, or use of water in a manner that is consistent with and not in violation of or contrary to the terms, conditions, limitations, requirements, or provisions of the UVD agreement;

(iii)(I) past, present, and future claims arising out of or relating to the use of water rights appurtenant to New Mexico 381 acres, on the conditions that such water rights remain subject to the oversight and reporting requirements set forth in the decree in Arizona v. California, 376 U.S. 340 (1964), as supplemented, and that the State of New Mexico shall make available on request a copy of any records prepared pursuant to that decree; and

(II) past, present, and future claims arising out of or relating to the use of water rights for New Mexico domestic purposes, on the conditions that such water rights remain subject to the oversight and reporting requirements set forth in the decree in Arizona v. California, 376 U.S. 340 (1964), as supplemented, and that the State of New Mexico shall make available on request a copy of any records prepared pursuant to that decree; and

(iv) past, present, and future claims arising out of or relating to the negotiation or execution of the UVD agreement, or the negotiation or enactment of titles I and II.

(6) TRIBAL WATER QUALITY STANDARDS.—The Community, on behalf of the Community and Community members, as part of the performance of its obligations under the Gila River agreement, is authorized to agree never to adopt any water quality standards, or ask the United States to promulgate such standards, that are more stringent than water quality standards adopted by the State if the Community's adoption of such standards could result in the imposition by the State or the United States of more stringent water quality limitations or requirements than those that would otherwise be imposed by the State or the United States on—

(A) any water delivery system used to deliver water to the Community; or

(B) the discharge of water into any such system.

(b) EFFECTIVENESS OF WAIVER AND RELEASES.—

(1) IN GENERAL.—The waivers under paragraphs (1) and (3) through (5) of subsection (a) shall become effective on the enforceability date.

(2) CLAIMS FOR SUBSIDENCE DAMAGE.—The waiver under subsection (a)(2) shall become effective on execution of the waiver by—

(A) the Community, a Community member, or an allottee; and

(B) the United States, on behalf of the Community, a Community member, or an allottee.

(c) ENFORCEABILITY DATE.—

(1) IN GENERAL.—This section takes effect on the date on which the Secretary publishes in the Federal Register a statement of findings that—

(A) to the extent the Gila River agreement conflicts with this title, the Gila River agreement has been revised through an amendment to eliminate the conflict and the Gila River agreement, so revised, has been executed by the Secretary and the Governor of the State;

(B) the Secretary has fulfilled the requirements of—

(i) paragraphs (1)(A)(i) and (2) of subsection (a) and subsections (b) and (d) of section 104; and

(ii) sections 204, 205, and 209(a);

(C) the master agreement authorized, ratified, and confirmed by section 106(a) has been executed by the parties to the master agreement, and all conditions to the enforceability of the master agreement have been satisfied;

(D) $53,000,000 has been identified and retained in the Lower Colorado River Basin Development Fund for the benefit of the Community in accordance with section 107(b);

(E) the State has appropriated and paid to the Community any amount to be paid under paragraph 27.4 of the Gila River agreement;

(F) the Salt River Project has paid to the Community $500,000 under subparagraph 16.9 of the Gila River agreement;

(G) the judgments and decrees attached to the Gila River agreement as exhibits 25.18A (Gila River adjudication proceedings) and 25.18B (Globe Equity Decree proceedings) have been approved by the respective courts;

(H) the dismissals attached to the Gila River agreement as exhibits 25.17.1A and B, 25.17.2, and 25.17.3A and B have been filed with the respective courts and any necessary dismissal orders entered;

(I) legislation has been enacted by the State to—

(i) implement the Southside Replenishment Program in accordance with subparagraph 5.3 of the Gila River agreement;

(ii) authorize the firming program required by section 105; and

(iii) establish the Upper Gila River Watershed Maintenance Program in accordance with subparagraph 26.8.1 of the Gila River agreement;

(J) the State has entered into an agreement with the Secretary to carry out the obligation of the State under section 105(b)(2)(A); and

(K) a final judgment has been entered in Central Arizona Water Conservation District v. United States (No. CIV 95–625–TUC–WDB(EHC), No. CIV 95–1720PHX–EHC) (Consolidated Action) in accordance with the repayment stipulation.

(2) FAILURE OF ENFORCEABILITY DATE TO OCCUR.—If, because of the failure of the enforceability date to occur by December 31, 2007, this section does not become effective, the Community, Community members, and allottees, and the United States on behalf of the San Carlos Irrigation and Drainage District, the Community, Community members, and allottees, shall retain the right to assert past, present, and future water rights claims, claims for injury to water rights, claims for injury to water quality, and claims for subsidence damage as to all land within the exterior boundaries of the Reservation, off-Reservation trust land, and fee land.

(d) ALL LAND WITHIN EXTERIOR BOUNDARIES OF THE RESERVATION.—Notwithstanding section 2(42), for purposes of this section, section 206, and section 210(d)—

(1) the term ''land within the exterior boundaries of the Reservation'' includes—

(A) land within the Reservation created pursuant to the Act of February 28, 1859, and modified by the executive orders of August 31, 1876, June 14, 1879, May 5, 1882, November 15, 1883, July 31, 1911, June 2, 1913, August 27, 1914, and July 19, 1915; and

(B) land located in sections 16 and 36, T. 4 S., R. 4 E., Salt and Gila River Baseline and Meridian; and

(2) the term ''off-Reservation'' refers to land located outside the exterior boundaries of the Reservation (as defined in paragraph (1)).

(e) NO RIGHTS TO WATER.—Upon the occurrence of the enforceability date—

(1) all land held by the United States in trust for the Community, Community members, and allottees and all land held by the Community within the exterior boundaries of the Reservation shall have no rights to water other than those specifically granted to the Community and the United States for the Reservation pursuant to paragraph 4.0 of the Gila River agreement; and

(2) all water usage on land within the exterior boundaries of the Reservation, including the land located in sections 16 and 36, T. 4 S., R. 4 E., Salt and Gila River Baseline and Meridian, upon acquisition by the Community or the United States on behalf of the Community, shall be taken into account in determining compliance by the Community and the United States with the limitations on total diversions specified in subparagraph 4.2 of the Gila River agreement.

SEC. 208. GILA RIVER INDIAN COMMUNITY WATER OM&R TRUST FUND.

(a) ESTABLISHMENT.—There is established in the Treasury of the United States a fund to be known as the ''Gila River Indian Community Water OM&R Fund'', to be managed and invested by the Secretary, consisting of $53,000,000, the amount made available for this purpose under paragraph (2)(B) of section 403(f) of the Colorado River Basin Project Act (43 U.S.C. 1543(f)) (as amended by section 107(a)).

(b) MANAGEMENT.—The Secretary shall manage the Water OM&R Fund, make investments from the Fund, and make monies available from the Fund for distribution to the Community consistent with the American Indian Trust Fund Management Reform Act of 1994 (25 U.S.C. 4001 et seq.), hereafter referred to in this section as the ''Trust Fund Reform Act''.

(c) INVESTMENT OF THE FUND.—The Secretary shall invest amounts in the Fund in accordance with—

(1) the Act of April 1, 1880 (21 Stat. 70, chapter 41; 25 U.S.C. 161);

(2) the first section of the Act of June 24, 1938 (52 Stat. 1037, chapter 648; 25 U.S.C. 162a); and

(3) subsection (b).

(d) EXPENDITURES AND WITHDRAWALS.—

(1) TRIBAL MANAGEMENT PLAN.—

(A) IN GENERAL.—The Community may withdraw all or part of the Water OM&R Fund on approval by the Secretary of a tribal management plan as described in the Trust Fund Reform Act.

(B) REQUIREMENTS.—In addition to the requirements under the Trust Fund Reform Act, the tribal management plan shall require that the Community only spend any funds, as provided in the Gila River agreement, to assist in paying operation, maintenance, and replacement costs associated with the delivery of CAP water for Community purposes.

(2) ENFORCEMENT.—The Secretary may take judicial or administrative action to enforce the provisions of any tribal management plan to ensure that the monies withdrawn from the Water OM&R Fund are used in accordance with this Act.

(3) LIABILITY.—If the Community exercises the right to withdraw monies from the Water OM&R

Fund, neither the Secretary nor the Secretary of the Treasury shall retain any liability for the expenditure or investment of the monies withdrawn.

(4) EXPENDITURE PLAN.—

(A) IN GENERAL.—The Community shall submit to the Secretary for approval an expenditure plan for any portion of the funds made available under this section that the Community does not withdraw under this subsection.

(B) DESCRIPTION.—The expenditure plan shall describe the manner in which, and the purposes for which, funds of the Community remaining in the Water OM&R Fund will be used.

(C) APPROVAL.—On receipt of an expenditure plan under subparagraph (A), the Secretary shall approve the plan if the Secretary determines that the plan is reasonable and consistent with this Act.

(5) ANNUAL REPORT.—The Community shall submit to the Secretary an annual report that describes all expenditures from the Water OM&R Fund during the year covered by the report.

(e) NO DISTRIBUTION TO MEMBERS.—No part of the principal of the Water OM&R Fund, or of the interest or income accruing on the principal, shall be distributed to any Community member on a per capita basis.

(f) FUNDS NOT AVAILABLE UNTIL ENFORCEABILITY DATE.—Amounts in the Water OM&R Fund shall not be available for expenditure or withdrawal by the Community until the enforceability date, or until January 1, 2010, whichever is later.

SEC. 209. SUBSIDENCE REMEDIATION PROGRAM.

(a) IN GENERAL.—Subject to the availability of funds and consistent with the provisions of section 107(a), the Secretary shall establish a program under which the Bureau of Reclamation shall repair and remediate subsidence damage and related damage that occurs after the enforceability date.

(b) DAMAGE.—Under the program, the Community, a Community member, or an allottee may submit to the Secretary a request for the repair or remediation of—

(1) subsidence damage; and

(2) damage to personal property caused by the settling of geologic strata or cracking in the earth's surface of any length or depth, which settling or cracking is caused by pumping of underground water.

(c) REPAIR OR REMEDIATION.—The Secretary shall perform the requested repair or remediation if—

(1) the Secretary determines that the Community has not exceeded its right to withdraw underground water under the Gila River agreement; and

(2) the Community, Community member, or allottee, and the Secretary as trustee for the Community, Community member, or allottee, execute a waiver and release of claim in the form specified in exhibit 25.9.1, 25.9.2, or 25.9.3 to the Gila River agreement, as applicable, to become effective on satisfactory completion of the requested repair or remediation, as determined under the Gila River agreement.

(d) SPECIFIC SUBSIDENCE DAMAGE.—Subject to the availability of funds, the Secretary, acting through the Commissioner of Reclamation, shall repair, remediate, and rehabilitate the subsidence damage that has occurred to land before the enforceability date within the Reservation, as specified in exhibit 30.21 to the Gila River agreement.

SEC. 210. AFTER-ACQUIRED TRUST LAND.

(a) REQUIREMENT OF ACT OF CONGRESS.—The Community may seek to have legal title to additional land in the State located outside the exterior boundaries of the Reservation taken into trust by the United States for the benefit of the Community pursuant only to an Act of Congress enacted after the date of enactment of this Act specifically authorizing the transfer for the benefit of the Community.

(b) WATER RIGHTS.—After-acquired trust land shall not include federally reserved rights to surface water or groundwater.

(c) SENSE OF CONGRESS.—It is the sense of Congress that future Acts of Congress authorizing land to be taken into trust under subsection (a) should provide that such land will have only such water rights and water use privileges as would be consistent with State water law and State water management policy.

(d) ACCEPTANCE OF LAND IN TRUST STATUS.—

(1) IN GENERAL.—If the Community acquires legal fee title to land that is located within the exterior boundaries of the Reservation (as defined in section 207(d)), the Secretary shall accept the land in trust status for the benefit of the Community upon receipt by the Secretary of a submission from the Community that provides evidence that—

(A) the land meets the Department of the Interior's minimum environmental standards and requirements for real estate acquisitions set forth in 602 DM 2.6, or any similar successor standards or requirements for real estate acquisitions in effect on the date of the Community's submission; and

(B) the title to the land meets applicable Federal title standards in effect on the date of the Community's submission.

(2) RESERVATION STATUS.—Land taken or held in trust by the Secretary under paragraph (1) shall be deemed part of the Community's reservation.

SEC. 211. REDUCTION OF WATER RIGHTS.

(a) REDUCTION OF TBI ELIGIBLE ACRES.—

(1) IN GENERAL.—Consistent with this title and as provided in the UVD agreement to assist in reducing the total water demand for irrigation use in the upper valley of the Gila River, the Secretary shall provide funds to the Gila Valley Irrigation District and the Franklin Irrigation District (hereafter in this section referred to as ''the Districts'') for the acquisition of UV decreed water rights and the extinguishment of those rights to decrease demands on the Gila River, or severance and transfer of those rights to the San Carlos Irrigation Project for the benefit of the Community and the San Carlos Irrigation and Drainage District in accordance with applicable law.

(2) ACQUISITIONS.—

(A) REQUIRED PHASE I ACQUISITION.—Not later than December 31 of the third calendar year that begins after the enforceability date (or December 31 of the first calendar year that begins after the payment provided by subparagraph (D)(iii), if later), the Districts shall acquire the UV decreed water rights appurtenant to 1,000 acres of land (other than special hot lands).

(B) REQUIRED PHASE II ACQUISITION.—Not later than December 31 of the sixth calendar year that begins after the enforceability date (or December 31 of the first calendar year that begins after the payment provided by subparagraph (D)(iii), if later), the Districts shall acquire the UV decreed water rights appurtenant to 1,000 acres of land (other than special hot lands). The reduction of TBI eligible acres under this subparagraph shall be in addition to that accomplished under subparagraph (A).

(C) ADDITIONAL ACQUISITION IN CASE OF SETTLEMENT.—If the San Carlos Apache Tribe reaches a comprehensive settlement that is approved by Congress and finally approved by all courts the approval of which is required, the Secretary shall offer to acquire for fair market value the UV decreed water rights associated with not less than 500 nor more than 3,000 TBI eligible acres of land (other than special hot lands).

(D) METHODS OF ACQUISITION FOR RIGHTS ACQUIRED PURSUANT TO SUBPARAGRAPHS (A) AND (B).—

(i) DETERMINATION OF VALUE.—

(I) APPRAISALS.—Not later than December 31 of the first calendar year that begins after the enforceability date in the case of the phase I acquisition, and not later than December 31 of the fourth calendar year that begins after the enforceability date in the case of the phase II acquisition, the Districts shall submit to the Secretary an appraisal of the average value of water rights appurtenant to 1,000 TBI eligible acres.

(II) REVIEW.—The Secretary shall review the appraisal submitted to ensure its consistency with the Uniform Appraisal Standards for Federal Land Acquisition and notify the Districts of the results of the review within 30 days of submission of the appraisal. In the event that the Secretary finds that the appraisal is not consistent with such standards, the Secretary shall so notify the Districts with a full explanation of the reasons for that finding. Within 60 days of being notified by the Secretary that the appraisal is not consistent with such Standards, the Districts shall resubmit an appraisal to the Secretary that is consistent with such standards. The Secretary shall review the resubmitted appraisal to ensure its consistency with nationally approved standards and notify the Districts of the results of the review within 30 days of resubmission.

(III) PETITION.—In the event that the Secretary finds that such resubmitted appraisal is not consistent with those Standards, either the Districts or the Secretary may petition a Federal court in the District of Arizona for a determination of whether the appraisal is consistent with nationally approved Standards. If such court finds the appraisal is so consistent, the value stated in the appraisal shall be final for all purposes. If such court finds the appraisal is not so consistent, the court shall determine the average value of water rights appurtenant to 1,000 TBI eligible acres.

(IV) NO OBJECTION.—If the Secretary does not object to an appraisal within the time periods provided in this clause (i), the value determined in the appraisal shall be final for all purposes.

(ii) APPRAISAL.—In determining the value of water rights pursuant to this paragraph, any court, the Districts, the Secretary, and any appraiser shall take into account the obligations the owner of the land (to which the rights are appurtenant) will have after acquisition for phreatophyle control as provided in the UVD agreement and to comply with environmental laws because of the acquisition and severance and transfer or extinguishment of the water rights.

(iii) PAYMENT.—No more than 30 days after the average value of water rights appurtenant to 1,000 acres of land has been determined in accordance with clauses (i) and (ii), the Secretary shall pay 125 percent of such values to the Districts.

(iv) REDUCTION OF ACREAGE.—No later than December 31 of the first calendar year that begins after each such payment, the Districts shall acquire the UV decreed water rights appurtenant to one thousand (1,000) acres of lands that would have been included in the calculation of TBI eligible acres (other than special hot lands), if the calculation of TBI eligible acres had been undertaken at the time of acquisition. To the extent possible, the Districts shall select the rights to be acquired in compliance with subsection 5.3.7 of the UVD agreement.

(3) REDUCTION OF TBI ELIGIBLE ACRES.—Simultaneously with the acquisition of UV decreed water rights under paragraph (2), the number of TBI eligible acres, but not the number of acres of UV subjugated land, shall be reduced by the number of acres associated with those UV decreed water rights.

(4) ALTERNATIVES TO ACQUISITION.—

(A) SPECIAL HOT LANDS.—After the payments provided by paragraph (2)(D)(iii), the Districts may fulfill the requirements of paragraphs (2) and (3) in full or in part, by entering into an agreement with an owner of special hot lands to prohibit permanently future irrigation of the special hot lands if the UVD settling parties simultaneously—

(i) acquire UV decreed water rights associated with a like number of UV decreed acres that are not TBI eligible acres; and

(ii) sever and transfer those rights to the San Carlos Irrigation Project for the benefit of the Community and the San Carlos Irrigation and Drainage District.

(B) FALLOWING AGREEMENT.—After the payment provided by paragraph (2)(D)(iii), the Districts may fulfill the requirements of paragraphs (2) and (3) in full or in part, by entering into an agreement with 1 or more owners of UV decreed acres and the UV irrigation district in which the acres are located, if any, under which—

(i) the number of TBI eligible acres is reduced; but

(ii) the owner of the UV decreed acres subject to the reduction is permitted to periodically irrigate the UV decreed acres under a fallowing agreement authorized under the UVD agreement.

(5) DISPOSITION OF ACQUIRED WATER RIGHTS.—

(A) IN GENERAL.—Of the UV decreed water rights acquired by the Districts pursuant to subparagraphs (A) and (B) of paragraph (2), the Districts shall, in accordance with all applicable law and the UVD agreement—

(i) sever, and transfer to the San Carlos Irrigation Project for the benefit of the Community and the San Carlos Irrigation and Drainage District, the UV decreed water rights associated with up to 900 UV decreed acres; and

(ii) extinguish the balance of the UV decreed water rights so acquired (except and only to the extent that those rights are associated with a fallowing agreement authorized under paragraph (4)(B)).

(B) SAN CARLOS APACHE SETTLEMENT.—With respect to water rights acquired by the Secretary pursuant to paragraph (2)(C), the Secretary shall, in accordance with applicable law—

(i) cause to be severed and transferred to the San Carlos Irrigation Project, for the benefit of the Community and the San Carlos Irrigation and Drainage District, the UV decreed water rights associated with 200 UV decreed acres;

(ii) cause to be extinguished the UV decreed water rights associated with 300 UV decreed acres; and

(iii) cause to be transferred the balance of those acquired water rights to the San Carlos Apache Tribe pursuant to the terms of the settlement described in paragraph (2)(C).

(6) MITIGATION.—To the extent the Districts, after the payments provided by paragraph (2)(D)(iii), do not comply with the acquisition requirements of paragraph (2) or otherwise comply with the alternatives to acquisition provided by paragraph (4), the Districts shall provide mitigation to the San Carlos Irrigation Project as provided by the UVD agreement.

(b) ADDITIONAL REDUCTIONS.—

(1) COOPERATIVE PROGRAM.—In addition to the reduction of TBI eligible acres to be accomplished under subsection (a), not later than 1 year after the enforceability date, the Secretary and the UVD settling parties shall cooperatively establish a program to purchase and extinguish UV decreed water rights associated with UV decreed acres that have not been recently irrigated.

(2) FOCUS.—The primary focus of the program under paragraph (1) shall be to prevent any land that contains riparian habitat from being reclaimed for irrigation.

(3) FUNDS AND RESOURCES.—The program under this subsection shall not require any expenditure of funds, or commitment of resources, by the UVD signatories other than such incidental expenditures of funds and commitments of resources as are required to cooperatively participate in the program.

SEC. 212. NEW MEXICO UNIT OF THE CENTRAL ARIZONA PROJECT.

(a) REQUIRED APPROVALS.—The Secretary shall not execute the Gila River agreement pursuant to section 203(b), and the agreement shall not become effective, unless and until the New Mexico Consumptive Use and Forbearance Agreement has been executed by all signatory parties and approved by the State of New Mexico.

(b) NEW MEXICO CONSUMPTIVE USE AND FORBEARANCE AGREEMENT.—

(1) IN GENERAL.—Except to the extent a provision of the New Mexico Consumptive Use and Forbearance Agreement conflicts with a provision of this title, the New Mexico Consumptive Use and Forbearance Agreement is authorized, ratified, and confirmed. To the extent amendments are executed to make the New Mexico Consumptive Use and Forbearance Agreement consistent with this title, such amendments are also authorized, ratified, and confirmed.

(2) EXECUTION.—To the extent the New Mexico Consumptive Use and Forbearance Agreement does not conflict with this title, the Secretary shall execute the New Mexico Consumptive Use and Forbearance Agreement, including all exhibits to which the Secretary is a party to the New Mexico Consumptive Use and Forbearance Agreement and any amendments to the New Mexico Consumptive Use and Forbearance necessary to make it consistent with this title.

(c) NEW MEXICO UNIT AGREEMENT.—The Secretary is authorized to execute the New Mexico Unit Agreement, which agreement shall be executed within 1 year of receipt by the Secretary of written notice from the State of New Mexico that the State of New Mexico intends to build the New Mexico Unit, which notice must be received not later than December 31, 2014. The New Mexico Unit Agreement shall, among other things, provide that—

(1) all funds from the Lower Colorado River Basin Development Fund disbursed in accordance with section 403(f)(2)(D) (i) and (ii) of the Colorado River Basin Project Act (as amended by section 107(a)) shall be nonreimbursable (and such costs shall be excluded from the repayment obligation, if any, of the NM CAP entity under the New Mexico Unit Agreement);

(2) in determining payment for CAP water under the New Mexico Unit Agreement, the NM CAP entity shall be responsible only for its share of operations, maintenance, and replacement costs (and no capital costs attendant to other units or portions of the Central Arizona Project shall be charged to the NM CAP entity);

(3) upon request by the NM CAP entity, the Secretary shall transfer to the NM CAP entity the responsibility to design, build, or operate and maintain the New Mexico Unit, or all or any combination of those responsibilities, provided that the Secretary shall not transfer the authority to divert water pursuant to the New Mexico Consumptive Use and Forbearance Agreement, provided further that the Secretary, shall remain responsible to the parties to the New Mexico Consumptive Use and Forbearance Agreement for the NM CAP entity's compliance with the terms and conditions of that agreement;

(4) the Secretary shall divert water and otherwise exercise her rights and authorities pursuant to the New Mexico Consumptive Use and Forbearance Agreement solely for the benefit of the NM CAP entity and for no other purpose;

(5) the NM CAP entity shall own and hold title to all portions of the New Mexico Unit constructed pursuant to the New Mexico Unit Agreement; and

(6) the Secretary shall provide a waiver of sovereign immunity for the sole and exclusive purpose of resolving a dispute in Federal court of any claim, dispute, or disagreement arising under the New Mexico Unit Agreement.

(d) AMENDMENT TO SECTION 304.—Section 304(f) of the Colorado River Basin Project Act (43 U.S.C. 1524(f)) is amended—

(1) by striking paragraph (1) and inserting the following: ''(1) In the operation of the Central Arizona Project, the Secretary shall offer to contract with water users in the State of New Mexico, with the approval of its Interstate Stream Commission, or with the State of New Mexico, through its Interstate Stream Commission, for water from the Gila River, its tributaries and underground water sources in amounts that will permit consumptive use of water in New Mexico of not to exceed an annual average in any period of 10 consecutive years of 14,000 acre-feet, including reservoir evaporation, over and above the consumptive uses provided for by article IV of the decree of the Supreme Court of the United States in Arizona v. California (376 U.S. 340). Such increased consumptive uses shall continue only so long as delivery of Colorado River water to downstream Gila River users in Arizona is being accomplished in accordance with this Act, in quantities sufficient to replace any diminution of their supply resulting from such diversion from the Gila River, its tributaries and underground water sources. In determining the amount required for this purpose, full consideration shall be given to any differences in the quality of the water involved.'';

(2) by striking paragraph (2); and

(3) by redesignating paragraph (3) as paragraph (2).

(e) COST LIMITATION.—In determining payment for CAP water under the New Mexico Consumptive Use and Forbearance Agreement, the NM CAP entity shall be responsible only for its share of operations, maintenance, and repair costs. No capital costs attendant to other Units or portions of the Central Arizona Project shall be charged to the NM CAP entity.

(f) EXCLUSION OF COSTS.—For the purpose of determining the allocation and repayment of costs of the Central Arizona Project under the CAP Repayment Contract, the costs associated with the New Mexico Unit and the delivery of Central Arizona Project water pursuant to the New Mexico Consumptive Use and Forbearance Agreement shall be nonreimbursable, and such costs shall be excluded from the Central Arizona Water Conservation District's repayment obligation.

(g) NEW MEXICO UNIT CONSTRUCTION AND OPERATIONS.—The Secretary is authorized to design, build, and operate and maintain the New Mexico Unit. Upon request by the State of New Mexico, the Secretary shall transfer to the NM CAP entity responsibility to design, build, or operate and maintain the New Mexico Unit, or all or any combination of those functions.

(h) NATIONAL ENVIRONMENTAL POLICY ACT.—

(1) NO MAJOR FEDERAL ACTION.—Execution of the New Mexico Consumptive Use and Forbearance Agreement and of the New Mexico Unit Agreement shall not constitute a major Federal action under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(2) ENVIRONMENTAL COMPLIANCE ACTIVITIES.—Upon execution of the New Mexico Unit Agreement, the Secretary shall promptly carry out the environmental compliance activities necessary to implement such agreement, including activities under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.).

(3) LEAD AGENCY.—The Bureau of Reclamation shall be designated as the lead agency with respect to environmental compliance. Upon request by the State of New Mexico to the Secretary, the State of New Mexico shall be designated as joint lead agency with respect to environmental compliance.

(i) NEW MEXICO UNIT FUND.—The Secretary shall deposit the amounts made available under paragraph (2)(D)(i) of section 403(f) of the Colorado River Basin Project Act (43 U.S.C. 1543(f)) (as amended by section 107(a)) into the New Mexico Unit Fund, a State of New Mexico Fund established and administered by the New Mexico Interstate Stream Commission. Withdrawals from the New Mexico Unit Fund shall be for the purpose of paying costs of the New Mexico Unit or other water utilization alternatives to meet water supply demands in the Southwest Water Planning Region of New Mexico, as determined by the New Mexico Interstate Stream Commission in consultation with the Southwest New

Mexico Water Study Group or its successor, including costs associated with planning and environmental compliance activities and environmental mitigation and restoration.

(j) ADDITIONAL FUNDING FOR NEW MEXICO UNIT.—The Secretary shall pay for an additional portion of the costs of constructing the New Mexico Unit from funds made available under paragraph (2)(D)(ii) of section 403(f) of the Colorado River Basin Project Act (43 U.S.C. 1543(f)) (as amended by section 107(a)) on a construction schedule basis, up to a maximum amount under this subparagraph (j) of $34,000,000, as adjusted to reflect changes since January 1, 2004, in the construction cost indices applicable to the types of construction involved in construction of the New Mexico Unit, upon satisfaction of the conditions that—

(1) the State of New Mexico must provide notice to the Secretary in writing not later than December 31, 2014, that the State of New Mexico intends to have constructed or developed the New Mexico Unit; and

(2) the Secretary must have issued in the Federal Register not later than December 31, 2019, a Record of Decision approving the project based on an environmental analysis required pursuant to applicable Federal law and on a demonstration that construction of a project for the New Mexico Unit that would deliver an average annual safe yield, based on a 50-year planning period, greater than 10,000 acre feet per year, would not cost more per acre foot of water diverted than a project sized to produce an average annual safe yield of 10,000 acre feet per year. If New Mexico exercises all reasonable efforts to obtain the issuance of such Record of Decision, but the Secretary is not able to issue such Record of Decision by December 31, 2019, for reasons outside the control of the State of New Mexico, the Secretary may extend the deadline for a reasonable period of time, not to extend beyond December 31, 2030.

(k) RATE OF RETURN EXCEEDING 4 PERCENT.—If the rate of return on carryover funds held in the Lower Colorado Basin Development Fund on the date that construction of the New Mexico Unit is initiated exceeds an average effective annual rate of 4 percent for the period beginning on the date of enactment of this Act through the date of initiation of construction of the New Mexico Unit, the Secretary shall pay an additional portion of the costs of the construction costs associated with the New Mexico Unit, on a construction schedule basis, using funds made available under paragraph (2)(D)(ii) of section 403(f) of the Colorado River Basin Project Act (43 U.S.C. 1543(f)) (as amended by section 107(a)). The amount of such additional payments shall be equal to 25 percent of the total return on the carryover funds earned during the period in question that is in excess of a return on such funds at an annual average effective return of 4 percent, up to a maximum total of not more than $28,000,000, as adjusted to reflect changes since January 1, 2004, in the construction cost indices applicable to the types of construction involved in construction of the New Mexico Unit.

(l) DISCLAIMER.—Nothing in this Act shall affect, alter, or diminish rights to use of water of the Gila River within New Mexico, or the authority of the State of New Mexico to administer such rights for use within the State, as such rights are quantified by article IV of the decree of the United States Supreme Court in Arizona v. California (376 U.S. 340).

(m) PRIORITY OF OTHER EXCHANGES.—The Secretary shall not approve any exchange of Gila River water for water supplied by the CAP that would amend, alter, or conflict with the exchanges authorized by section 304(f) of the Colorado River Basin Project Act (43 U.S.C. 1524(f)).

SEC. 213. MISCELLANEOUS PROVISIONS.

(a) WAIVER OF SOVEREIGN IMMUNITY.—If any party to the Gila River agreement or signatory to an exhibit executed pursuant to section 203(b) or to the New Mexico Consumptive Use and Forbearance Agreement brings an action in any court of the United States or any State court relating only and directly to the interpretation or enforcement of this title or the Gila River agreement (including enforcement of any indemnity provisions contained in the Gila River agreement) or the New Mexico Consumptive Use and Forbearance Agreement, and names the United States or the Community as a party, or if any other landowner or water user in the Gila River basin in Arizona (except any party referred to in subparagraph 28.1.4 of the Gila River agreement) files a lawsuit relating only and directly to the interpretation or enforcement of subparagraph 6.2, subparagraph 6.3, paragraph 25, subparagraph 26.2, subparagraph 26.8, and subparagraph 28.1.3 of the Gila River agreement, naming the United States or the Community as a party—

(1) the United States, the Community, or both, may be joined in any such action; and

(2) any claim by the United States or the Community to sovereign immunity from the action is waived, but only for the limited and sole purpose of such interpretation or enforcement (including any indemnity provisions contained in the Gila River agreement).

(b) EFFECT OF ACT.—Nothing in this title quantifies or otherwise affects the water rights, or claims or entitlements to water, of any Indian tribe, band, or community, other than the Community.

(c) LIMITATION ON CLAIMS FOR REIMBURSEMENT.—The United States shall not make a claim for reimbursement of costs arising out of the implementation of this title or the Gila River agreement against any Indian-owned land within the Reservation, and no assessment shall be made in regard to those costs against that land.

(d) NO EFFECT ON FUTURE ALLOCATIONS.—Water received under a lease or exchange of Community CAP water under this title shall not affect any future allocation or reallocation of CAP water by the Secretary.

(e) COMMUNITY REPAYMENT CONTRACT.—To the extent it is not in conflict with this Act, the Secretary is directed to and shall execute Amendment No. 1 to the Community repayment contract, attached as exhibit 8.1 to the Gila River agreement, to provide, among other things, that the costs incurred under that contract shall be nonreimbursable by the Community. To the extent amendments are executed to make Amendment No. 1 consistent with this title, such amendments are also authorized, ratified, and confirmed.

(f) SALT RIVER PROJECT RIGHTS AND CONTRACTS.—

(1) IN GENERAL.—Subject to paragraph (2), the agreement between the United States and the Salt River Valley Water Users' Association dated September 6, 1917, as amended, and the rights of the Salt River Project to store water from the Salt River and Verde River at Roosevelt Dam, Horse Mesa Dam, Mormon Flat Dam, Stewart Mountain Dam, Horseshoe Dam, and Bartlett Dam and to deliver the stored water to shareholders of the Salt River Project and others for all beneficial uses and purposes recognized under State law and to the Community under the Gila River agreement, are authorized, ratified, and confirmed.

(2) PRIORITY DATE; QUANTIFICATION.—The priority date and quantification of rights described in paragraph (1) shall be determined in an appropriate proceeding in State court.

(3) CARE, OPERATION, AND MAINTENANCE.—The Salt River Project shall retain authority and responsibility existing on the date of enactment of this Act for decisions relating to the care, operation, and maintenance of the Salt River Project water delivery system, including the Salt River Project reservoirs on the Salt River and Verde River, vested in Salt River Project under the 1917 agreement, as amended, described in paragraph (1).

(g) UV IRRIGATION DISTRICTS.—

(1) IN GENERAL.—As partial consideration for obligations the UV irrigation districts shall be undertaking, the obligation to comply with the terms and conditions of term 5 of exhibit 2.30 (New Mexico Risk Allocation Terms) to the New Mexico Consumptive Use and Forbearance Agreement, the Gila Valley Irrigation District, in 2010, shall receive funds from the Secretary in an amount of $15,000,000 (adjusted to reflect changes since the date of enactment of this Act in the cost indices applicable to the type of design and construction involved in the design and construction of a pipeline at or upstream from the Ft. Thomas Diversion Dam to the lands farmed by the San Carlos Apache Tribe, together with canal connections upstream from the Ft. Thomas Diversion Dam and connection devices appropriate to introduce pumped water into the Pipeline).

(2) RESTRICTION.—The funds to be received by the Gila Valley Irrigation District shall be used solely for the purpose of developing programs or constructing facilities to assist with mitigating the risks and costs associated with compliance with the terms and conditions of term 5 of exhibit 2.30 (New Mexico Risk Allocation Terms) of the New Mexico Consumptive and Forbearance Agreement, and for no other purpose.

(h) LIMITATION ON LIABILITY OF UNITED STATES.—

(1) IN GENERAL.—The United States shall have no trust or other obligation—

(A) to monitor, administer, or account for, in any manner, any of the funds paid to the Community by any party to the Gila River agreement; or

(B) to review or approve the expenditure of those funds.

(2) INDEMNIFICATION.—The Community shall indemnify the United States, and hold the United States harmless, with respect to any and all claims (including claims for takings or breach of trust) arising out of the receipt or expenditure of funds described in paragraph (1)(A).

(i) BLUE RIDGE PROJECT TRANSFER AUTHORIZATION.—

(1) DEFINITIONS.—In this subsection:

(A) BLUE RIDGE PROJECT.—The term ''Blue Ridge Project'' means the water storage reservoir known as ''Blue Ridge Reservoir'' situated in Coconino and Gila Counties, Arizona, consisting generally of—

(i) Blue Ridge Dam and all pipelines, tunnels, buildings, hydroelectric generating facilities, and other structures of every kind, transmission, telephone and fiber optic lines, pumps, machinery, tools, and appliances; and

(ii) all real or personal property, appurtenant to or used, or constructed or otherwise acquired to be used, in connection with Blue Ridge Reservoir.

(B) SALT RIVER PROJECT AGRICULTURAL IMPROVEMENT AND POWER DISTRICT.—The term ''Salt River Project Agricultural Improvement and Power District'' means the Salt River Project Agricultural Improvement and Power District, a political subdivision of the State of Arizona.

(2) TRANSFER OF TITLE.—The United States, acting through the Secretary of the Interior, shall accept from the Salt River Project Agricultural Improvement and Power District the transfer of title to the Blue Ridge Project. The transfer of title to the Blue Ridge Project from the Salt River Project Agricultural Improvement and Power District to the United States shall be without cost to the United States. The transfer, change of use or change of place of use of any water rights associated with the Blue Ridge Project shall be made in accordance with Arizona law.

(3) USE AND BENEFIT OF SALT RIVER FEDERAL RECLAMATION PROJECT.—

(A) IN GENERAL.—Subject to subparagraph (B), the United States shall hold title to the Blue Ridge Project for the exclusive use and benefit of the Salt River Federal Reclamation Project.

(B) AVAILABILITY OF WATER.—Up to 3,500 acre-feet of water per year may be made available from Blue Ridge Reservoir for municipal and domestic uses in Northern Gila County, Arizona, without cost to the Salt River Federal Reclamation Project.

(4) TERMINATION OF JURISDICTION.—

(A) LICENSING AND REGULATORY AUTHORITY.—Upon the transfer of title of the Blue Ridge Project to the United States under paragraph (2), the Federal Energy Regulatory Commission shall have no further licensing and regulatory authority over Project Number 2304, the Blue Ridge Project, located within the State.

(B) ENVIRONMENTAL LAWS.—All other applicable Federal environmental laws shall continue to apply to the Blue Ridge Project, including the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) and the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(5) CARE, OPERATION, AND MAINTENANCE.—Upon the transfer of title of the Blue Ridge Project to the United States under paragraph (2), the Salt River Valley Water Users' Association and the Salt River Project Agricultural Improvement and Power District shall be responsible for the care, operation, and maintenance of the project pursuant to the contract between the United States and the Salt River Valley Water Users' Association, dated September 6, 1917, as amended.

(6) C.C. CRAGIN DAM & RESERVOIR.—Upon the transfer of title of the Blue Ridge Project to the United States under paragraph (2), Blue Ridge Dam and Reservoir shall thereafter be known as the ''C.C. Cragin Dam and Reservoir''.

(j) EFFECT ON CURRENT LAW; JURISDICTION OF COURTS.—Nothing in this section—

(1) alters law in effect on the day before the date of enactment of this Act with respect to pre-enforcement review of Federal environmental enforcement actions; or

(2) confers jurisdiction on any State court to interpret subparagraphs (D), (E), and (G) of section 207(a)(1) where such jurisdiction does not otherwise exist.

SEC. 214. AUTHORIZATION OF APPROPRIATIONS.

(a) AUTHORIZATION OF APPROPRIATIONS.—

(1) REHABILITATION OF IRRIGATION WORKS.—

(A) IN GENERAL.—There is authorized to be appropriated $52,396,000, adjusted to reflect changes since January 1, 2000, under subparagraph (B) for the rehabilitation of irrigation works under section 203(d)(4).

(B) ADJUSTMENT.—The amount under subparagraph (A) shall be adjusted by such amounts, if any, as may be required by reason of changes in construction costs as indicated by engineering cost indices applicable to the types of construction required by the rehabilitation.

(2) BUREAU OF RECLAMATION CONSTRUCTION OVERSIGHT.—There are authorized to be appropriated such sums as are necessary for the Bureau of Reclamation to undertake the oversight of the construction projects authorized under section 203.

(3) SUBSIDENCE REMEDIATION PROGRAM.—There are authorized to be appropriated such sums as are necessary to carry out the subsidence remediation program under section 209 (including such sums as are necessary, not to exceed $4,000,000, to carry out the subsidence remediation and repair required under section 209(d)).

(4) WATER RIGHTS REDUCTION.—There are authorized to be appropriated such sums as are necessary to carry out the water rights reduction program under section 211.

(5) SAFFORD FACILITY.—There are authorized to be appropriated such sums as are necessary to—

(A) retire $13,900,000, minus any amounts appropriated for this purpose, of the debt incurred by Safford to pay costs associated with the construction of the Safford facility as identified in exhibit 26.1 to the Gila River agreement; and

(B) pay the interest accrued on that amount.

(6) ENVIRONMENTAL COMPLIANCE.—There are authorized to be appropriated—

(A) such sums as are necessary to carry out—

(i) all necessary environmental compliance activities undertaken by the Secretary associated with the Gila River agreement and this title;

(ii) any mitigation measures adopted by the Secretary that are the responsibility of the Community associated with the construction of the diversion and delivery facilities of the water referred to in section 204 for use on the reservation; and

(iii) no more than 50 percent of the cost of any mitigation measures adopted by the Secretary that are the responsibility of the Community associated with the diversion or delivery of the water referred to in section 204 for use on the Reservation, other than any responsibility related to water delivered to any other person by lease or exchange; and

(B) to carry out the mitigation measures in the Roosevelt Habitat Conservation Plan, not more than $10,000,000.

(7) UV IRRIGATION DISTRICTS.—There are authorized to be appropriated such sums as are necessary to pay the Gila Valley Irrigation District an amount of $15,000,000 (adjusted to reflect changes since the date of enactment of the Arizona Water Settlements Act of 2004 in the cost indices applicable to the type of design and construction involved in the design and construction of a pipeline at or upstream from the Ft. Thomas Diversion Dam to the lands farmed by the San Carlos Apache Tribe, together with canal connections upstream from the Ft. Thomas Diversion Dam and connection devices appropriate to introduce pumped water into the Pipeline).

(b) IDENTIFIED COSTS.—

(1) IN GENERAL.—Amounts made available under subsection (a) shall be considered to be identified costs for purposes of paragraph (2)(D)(v)(I) of section 403(f) of the Colorado River Basin Project Act (43 U.S.C. 1543(f)) (as amended by section 107(a)).

(2) EXCEPTION.—Amounts made available under subsection (a)(4) to carry out section 211(b) shall not be considered to be identified costs for purposes of section 403(f)(2)(D)(v)(I) of the Colorado River Basin Project Act (43 U.S.C. 1543(f)(2)(D)(v)(I)) (as amended by section 107(a)).

SEC. 215. REPEAL ON FAILURE OF ENFORCEABILITY DATE.

If the Secretary does not publish a statement of findings under section 207(c) by December 31, 2007—

(1) except for section 213(i), this title is repealed effective January 1, 2008, and any action taken by the Secretary and any contract entered under any provision of this title shall be void;

(2) any amounts appropriated under paragraphs (1) through (7) of section 214(a), together with any interest on those amounts, shall immediately revert to the general fund of the Treasury;

(3) any amounts made available under section 214(b) that remain unexpended shall immediately revert to the general fund of the Treasury; and

(4) any amounts paid by the Salt River Project in accordance with the Gila River agreement shall immediately be returned to the Salt River Project.

TITLE III—SOUTHERN ARIZONA WATER RIGHTS SETTLEMENT

SEC. 301. SOUTHERN ARIZONA WATER RIGHTS SETTLEMENT.

The Southern Arizona Water Rights Settlement Act of 1982 (96 Stat. 1274) is amended to read as follows:

"TITLE III—SOUTHERN ARIZONA WATER RIGHTS SETTLEMENT

"SEC. 301. SHORT TITLE.

''This title may be cited as the 'Southern Arizona Water Rights Settlement Amendments Act of 2004'.

"SEC. 302. PURPOSES.

''The purposes of this title are—

''(1) to authorize, ratify, and confirm the agreements referred to in section 309(h);

''(2) to authorize and direct the Secretary to execute and perform all obligations of the Secretary under those agreements; and

''(3) to authorize the actions and appropriations necessary for the United States to meet obligations of the United States under those agreements and this title.

"SEC. 303. DEFINITIONS.

''In this title:

''(1) ACRE-FOOT.—The term 'acre-foot' means the quantity of water necessary to cover 1 acre of land to a depth of 1 foot.

''(2) AFTER-ACQUIRED TRUST LAND.—The term 'after-acquired trust land' means land that—

''(A) is located—

''(i) within the State; but

''(ii) outside the exterior boundaries of the Nation's Reservation; and

''(B) is taken into trust by the United States for the benefit of the Nation after the enforceability date.

''(3) AGREEMENT OF DECEMBER 11, 1980.—The term 'agreement of December 11, 1980' means the contract entered into by the United States and the Nation on December 11, 1980.

''(4) AGREEMENT OF OCTOBER 11, 1983.—The term 'agreement of October 11, 1983' means the contract entered into by the United States and the Nation on October 11, 1983.

''(5) ALLOTTEE.—The term 'allottee' means a person that holds a beneficial real property interest in an Indian allotment that is—

''(A) located within the Reservation; and

''(B) held in trust by the United States.

''(6) ALLOTTEE CLASS.—The term 'allottee class' means an applicable plaintiff class certified by the court of jurisdiction in—

''(A) the Alvarez case; or

''(B) the Tucson case.

''(7) ALVAREZ CASE.—The term 'Alvarez case' means the first through third causes of action of the third amended complaint in Alvarez v. City of Tucson (Civ. No. 93–09039 TUC FRZ (D. Ariz., filed April 21, 1993)).

''(8) APPLICABLE LAW.—The term 'applicable law' means any applicable Federal, State, tribal, or local law.

''(9) ASARCO.—The term 'Asarco' means Asarco Incorporated, a New Jersey corporation of that name, and its subsidiaries operating mining operations in the State.

''(10) ASARCO AGREEMENT.—The term 'Asarco agreement' means the agreement by that name attached to the Tohono O'odham settlement agreement as exhibit 13.1.

''(11) CAP REPAYMENT CONTRACT.—

''(A) IN GENERAL.—The term 'CAP repayment contract' means the contract dated December 1, 1988 (Contract No. 14–0906–09W–09245, Amendment No. 1) between the United States and the Central Arizona Water Conservation District for the delivery of water and the repayment of costs of the Central Arizona Project.

''(B) INCLUSIONS.—The term 'CAP repayment contract' includes all amendments to and revisions of that contract.

''(12) CENTRAL ARIZONA PROJECT.—The term 'Central Arizona Project' means the reclamation project authorized and constructed by the United States in accordance with title III of the Colorado River Basin Project Act (43 U.S.C. 1521 et seq.).

''(13) CENTRAL ARIZONA PROJECT LINK PIPELINE.—The term 'Central Arizona Project link pipeline' means the pipeline extending from the Tucson Aqueduct of the Central Arizona Project to Station 293+36.

''(14) CENTRAL ARIZONA PROJECT SERVICE AREA.—The term 'Central Arizona Project service area' means—

''(A) the geographical area comprised of Maricopa, Pinal, and Pima Counties, Arizona, in which the Central Arizona Water Conservation

District delivers Central Arizona Project water; and

''(B) any expansion of that area under applicable law.

''(15) CENTRAL ARIZONA WATER CONSERVATION DISTRICT.—The term 'Central Arizona Water Conservation District' means the political subdivision of the State that is the contractor under the CAP repayment contract.

''(16) COOPERATIVE FARM.—The term 'cooperative farm' means the farm on land served by an irrigation system and the extension of the irrigation system provided for under paragraphs (1) and (2) of section 304(c).

''(17) COOPERATIVE FUND.—The term 'cooperative fund' means the cooperative fund established by section 313 of the 1982 Act and reauthorized by section 310.

''(18) DELIVERY AND DISTRIBUTION SYSTEM.—

''(A) IN GENERAL.—The term 'delivery and distribution system' means—

''(i) the Central Arizona Project aqueduct;

''(ii) the Central Arizona Project link pipeline; and

''(iii) the pipelines, canals, aqueducts, conduits, and other necessary facilities for the delivery of water under the Central Arizona Project.

''(B) INCLUSIONS.—The term 'delivery and distribution system' includes pumping facilities, power plants, and electric power transmission facilities external to the boundaries of any farm to which the water is distributed.

''(19) EASTERN SCHUK TOAK DISTRICT.—The term 'eastern Schuk Toak District' means the portion of the Schuk Toak District (1 of 11 political subdivisions of the Nation established under the constitution of the Nation) that is located within the Tucson management area.

''(20) ENFORCEABILITY DATE.—The term 'enforceability date' means the date on which title III of the Arizona Water Settlements Act takes effect (as described in section 302(b) of the Arizona Water Settlements Act).

''(21) EXEMPT WELL.—The term 'exempt well' means a water well—

''(A) the maximum pumping capacity of which is not more than 35 gallons per minute; and

''(B) the water from which is used for—

''(i) the supply, service, or activities of households or private residences;

''(ii) landscaping;

''(iii) livestock watering; or

''(iv) the irrigation of not more than 2 acres of land for the production of 1 or more agricultural or other commodities for—

''(I) sale;

''(II) human consumption; or

''(III) use as feed for livestock or poultry.

''(22) FEE OWNER OF ALLOTTED LAND.—The term 'fee owner of allotted land' means a person that holds fee simple title in real property on the Reservation that, at any time before the date on which the person acquired fee simple title, was held in trust by the United States as an Indian allotment.

''(23) FICO.—The term 'FICO' means collectively the Farmers Investment Co., an Arizona corporation of that name, and the Farmers Water Co., an Arizona corporation of that name.

''(24) INDIAN TRIBE.—The term 'Indian tribe' has the meaning given the term in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b).

''(25) INJURY TO WATER QUALITY.—The term 'injury to water quality' means any contamination, diminution, or deprivation of water quality under applicable law.

''(26) INJURY TO WATER RIGHTS.—

''(A) IN GENERAL.—The term 'injury to water rights' means an interference with, diminution of, or deprivation of water rights under applicable law.

''(B) INCLUSION.—The term 'injury to water rights' includes a change in the underground water table and any effect of such a change.

''(C) EXCLUSION.—The term 'injury to water rights' does not include subsidence damage or injury to water quality.

''(27) IRRIGATION SYSTEM.—

''(A) IN GENERAL.—The term 'irrigation system' means canals, laterals, ditches, sprinklers, bubblers, and other irrigation works used to distribute water within the boundaries of a farm.

''(B) INCLUSIONS.—The term 'irrigation system', with respect to the cooperative farm, includes activities, procedures, works, and devices for—

''(i) rehabilitation of fields;

''(ii) remediation of sinkholes, sinks, depressions, and fissures; and

''(iii) stabilization of the banks of the Santa Cruz River.

''(28) LOWER COLORADO RIVER BASIN DEVELOPMENT FUND.—The term 'Lower Colorado River Basin Development Fund' means the fund established by section 403 of the Colorado River Basin Project Act (43 U.S.C. 1543).

''(29) M&I PRIORITY WATER.—The term 'M&I priority water' means Central Arizona Project water that has municipal and industrial priority.

''(30) NATION.—The term 'Nation' means the Tohono O'odham Nation (formerly known as the Papago Tribe) organized under a constitution approved in accordance with section 16 of the Act of June 18, 1934 (25 U.S.C. 476).

''(31) NATION'S RESERVATION.—The term 'Nation's Reservation' means all land within the exterior boundaries of—

''(A) the Sells Tohono O'odham Reservation established by the Executive order of February 1, 1917, and the Act of February 21, 1931 (46 Stat. 1202, chapter 267);

''(B) the San Xavier Reservation established by the Executive order of July 1, 1874;

''(C) the Gila Bend Indian Reservation established by the Executive order of December 12, 1882, and modified by the Executive order of June 17, 1909;

''(D) the Florence Village established by Public Law 95–361 (92 Stat. 595);

''(E) all land acquired in accordance with the Gila Bend Indian Reservation Lands Replacement Act (100 Stat. 1798), if title to the land is held in trust by the Secretary for the benefit of the Nation; and

''(F) all other land to which the United States holds legal title in trust for the benefit of the Nation and that is added to the Nation's Reservation or granted reservation status in accordance with applicable Federal law before the enforceability date.

''(32) NET IRRIGABLE ACRES.—The term 'net irrigable acres' means, with respect to a farm, the acreage of the farm that is suitable for agriculture, as determined by the Nation and the Secretary.

''(33) NIA PRIORITY WATER.—The term 'NIA priority water' means Central Arizona Project water that has non-Indian agricultural priority.

''(34) SAN XAVIER ALLOTTEES ASSOCIATION.—The term 'San Xavier Allottees Association' means the nonprofit corporation established under State law for the purpose of representing and advocating the interests of allottees.

''(35) SAN XAVIER COOPERATIVE ASSOCIATION.—The term 'San Xavier Cooperative Association' means the entity chartered under the laws of the Nation (or a successor of that entity) that is a lessee of land within the cooperative farm.

''(36) SAN XAVIER DISTRICT.—The term 'San Xavier District' means the district of that name, 1 of 11 political subdivisions of the Nation established under the constitution of the Nation.

''(37) SAN XAVIER DISTRICT COUNCIL.—The term 'San Xavier District Council' means the governing body of the San Xavier District, as established under the constitution of the Nation.

''(38) SAN XAVIER RESERVATION.—The term 'San Xavier Reservation' means the San Xavier Indian Reservation established by the Executive order of July 1, 1874.

''(39) SCHUK TOAK FARM.—The term 'Schuk Toak Farm' means a farm constructed in the eastern Schuk Toak District served by the irrigation system provided for under section 304(c)(4).

''(40) SECRETARY.—The term 'Secretary' means the Secretary of the Interior.

''(41) STATE.—The term 'State' means the State of Arizona.

''(42) SUBJUGATE.—The term 'subjugate' means to prepare land for agricultural use through irrigation.

''(43) SUBSIDENCE DAMAGE.—The term 'subsidence damage' means injury to land, water, or other real property resulting from the settling of geologic strata or cracking in the surface of the earth of any length or depth, which settling or cracking is caused by the pumping of water.

''(44) SURFACE WATER.—The term 'surface water' means all water that is appropriable under State law.

''(45) TOHONO O'ODHAM SETTLEMENT AGREEMENT.—The term 'Tohono O'odham settlement agreement' means the agreement dated April 30, 2003 (including all exhibits of and attachments to the agreement).

''(46) TUCSON CASE.—The term 'Tucson case' means United States et al. v. City of Tucson, et al. (Civ. No. 75–0939 TUC consol. with Civ. No. 75–0951 TUC FRZ (D. Ariz., filed February 20, 1975)).

''(47) TUCSON INTERIM WATER LEASE.—The term 'Tucson interim water lease' means the lease, and any pre-2004 amendments and extensions of the lease, approved by the Secretary, between the city of Tucson, Arizona, and the Nation, dated October 24, 1992.

''(48) TUCSON MANAGEMENT AREA.—The term 'Tucson management area' means the area in the State comprised of—

''(A) the area—

''(i) designated as the Tucson Active Management Area under the Arizona Groundwater Management Act of 1980 (1980 Ariz. Sess. Laws 1); and

''(ii) subsequently divided into the Tucson Active Management Area and the Santa Cruz Active Management Area (1994 Ariz. Sess. Laws 296); and

''(B) the portion of the Upper Santa Cruz Basin that is not located within the area described in subparagraph (A)(i).

''(49) TURNOUT.—The term 'turnout' means a point of water delivery on the Central Arizona Project aqueduct.

''(50) UNDERGROUND STORAGE.—The term 'underground storage' means storage of water accomplished under a project authorized under section 308(e).

''(51) UNITED STATES AS TRUSTEE.—The term 'United States as Trustee' means the United States, acting on behalf of the Nation and allottees, but in no other capacity.

''(52) VALUE.—The term 'value' means the value attributed to water based on the greater of—

''(A) the anticipated or actual use of the water; or

''(B) the fair market value of the water.

''(53) WATER RIGHT.—The term 'water right' means any right in or to groundwater, surface water, or effluent under applicable law.

''(54) 1982 ACT.—The term '1982 Act' means the Southern Arizona Water Rights Settlement Act of 1982 (96 Stat. 1274; 106 Stat. 3256), as in effect on the day before the enforceability date.

''SEC. 304. WATER DELIVERY AND CONSTRUCTION OBLIGATIONS.

''(a) WATER DELIVERY.—The Secretary shall deliver annually from the main project works of the Central Arizona Project, a total of 37,800 acre-feet of water suitable for agricultural use, of which—

''(1) 27,000 acre-feet shall—

''(A) be deliverable for use to the San Xavier Reservation; or

''(B) otherwise be used in accordance with section 309; and

''(2) 10,800 acre-feet shall—

''(A) be deliverable for use to the eastern Schuk Toak District; or

''(B) otherwise be used in accordance with section 309.

''(b) DELIVERY AND DISTRIBUTION SYSTEMS.—The Secretary shall (without cost to the Nation, any allottee, the San Xavier Cooperative Association, or the San Xavier Allottees Association), as part of the main project works of the Central Arizona Project, design, construct, operate, maintain, and replace the delivery and distribution systems necessary to deliver the water described in subsection (a).

''(c) DUTIES OF THE SECRETARY.—

''(1) COMPLETION OF DELIVERY AND DISTRIBUTION SYSTEM AND IMPROVEMENT TO EXISTING IRRIGATION SYSTEM.—Except as provided in subsection (d), not later than 8 years after the enforceability date, the Secretary shall complete the design and construction of improvements to the irrigation system that serves the cooperative farm.

''(2) EXTENSION OF EXISTING IRRIGATION SYSTEM WITHIN THE SAN XAVIER RESERVATION.—

''(A) IN GENERAL.—Except as provided in subsection (d), not later than 8 years after the enforceability date, in addition to the improvements described in paragraph (1), the Secretary shall complete the design and construction of the extension of the irrigation system for the cooperative farm.

''(B) CAPACITY.—On completion of the extension, the extended cooperative farm irrigation system shall serve 2,300 net irrigable acres on the San Xavier Reservation, unless the Secretary and the San Xavier Cooperative Association agree on fewer net irrigable acres.

''(3) CONSTRUCTION OF NEW FARM.—

''(A) IN GENERAL.—Except as provided in subsection (d), not later than 8 years after the enforceability date, the Secretary shall—

''(i) design and construct within the San Xavier Reservation such additional canals, laterals, farm ditches, and irrigation works as are necessary for the efficient distribution for agricultural purposes of that portion of the 27,000 acre-feet annually of water described in subsection (a)(1) that is not required for the irrigation systems described in paragraphs (1) and (2) of subsection (c); or

''(ii) in lieu of the actions described in clause (i), pay to the San Xavier District $18,300,000 (adjusted as provided in section 317(a)(2)) in full satisfaction of the obligations of the United States described in clause (i).

''(B) ELECTION.—

''(i) IN GENERAL.—The San Xavier District Council may make a nonrevocable election whether to receive the benefits described under clause (i) or (ii) of subparagraph (A) by notifying the Secretary by not later than 180 days after the enforceability date or January 1, 2010, whichever is later, by written and certified resolution of the San Xavier District Council.

''(ii) NO RESOLUTION.—If the Secretary does not receive such a resolution by the deadline specified in clause (i), the Secretary shall pay $18,300,000 (adjusted as provided in section 317(a)(2)) to the San Xavier District in lieu of carrying out the obligations of the United States under subparagraph (A)(i).

''(C) SOURCE OF FUNDS AND TIME OF PAYMENT.—

''(i) IN GENERAL.—Payment of $18,300,000 (adjusted as provided in section 317(a)(2)) under this paragraph shall be made by the Secretary from the Lower Colorado River Basin Development Fund—

''(I) not later than 60 days after an election described in subparagraph (B) is made (if such an election is made), but in no event earlier than the enforceability date or January 1, 2010, whichever is later; or

''(II) not later than 240 days after the enforceability date or January 1, 2010, whichever is later, if no timely election is made.

''(ii) PAYMENT FOR ADDITIONAL STRUCTURES.—Payment of amounts necessary to design and construct such additional canals, laterals, farm ditches, and irrigation works as are described in subparagraph (A)(i) shall be made by the Secretary from the Lower Colorado River Basin Development Fund, if an election is made to receive the benefits under subparagraph (A)(i).

''(4) IRRIGATION AND DELIVERY AND DISTRIBUTION SYSTEMS IN THE EASTERN SCHUK TOAK DISTRICT.—Except as provided in subsection (d), not later than 1 year after the enforceability date, the Secretary shall complete the design and construction of an irrigation system and delivery and distribution system to serve the farm that is constructed in the eastern Schuk Toak District.

''(d) EXTENSION OF DEADLINES.—

''(1) IN GENERAL.—The Secretary may extend a deadline under subsection (c) if the Secretary determines that compliance with the deadline is impracticable by reason of—

''(A) a material breach by a contractor of a contract that is relevant to carrying out a project or activity described in subsection (c);

''(B) the inability of such a contractor, under such a contract, to carry out the contract by reason of force majeure, as defined by the Secretary in the contract;

''(C) unavoidable delay in compliance with applicable Federal and tribal laws, as determined by the Secretary, including—

''(i) the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.); and

''(ii) the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.); or

''(D) stoppage in work resulting from the assessment of a tax or fee that is alleged in any court of jurisdiction to be confiscatory or discriminatory.

''(2) NOTICE OF FINDING.—If the Secretary extends a deadline under paragraph (1), the Secretary shall—

''(A) publish a notice of the extension in the Federal Register; and

''(B)(i) include in the notice an estimate of such additional period of time as is necessary to complete the project or activity that is the subject of the extension; and

''(ii) specify a deadline that provides for a period for completion of the project before the end of the period described in clause (i).

''(e) AUTHORITY OF SECRETARY.—

''(1) IN GENERAL.—In carrying out this title, after providing reasonable notice to the Nation, the Secretary, in compliance with all applicable law, may enter, construct works on, and take such other actions as are related to the entry or construction on land within the San Xavier District and the eastern Schuk Toak District.

''(2) EFFECT ON FEDERAL ACTIVITY.—Nothing in this subsection affects the authority of the United States, or any Federal officer, agent, employee, or contractor, to conduct official Federal business or carry out any Federal duty (including any Federal business or duty under this title) on land within the eastern Schuk Toak District or the San Xavier District.

''(f) USE OF FUNDS.—

''(1) IN GENERAL.—With respect to any funds received under subsection (c)(3)(A), the San Xavier District—

''(A) shall hold the funds in trust, and invest the funds in interest-bearing deposits and securities, until expended;

''(B) may expend the principal of the funds, and any interest and dividends that accrue on the principal, only in accordance with a budget that is—

''(i) authorized by the San Xavier District Council; and

''(ii) approved by resolution of the Legislative Council of the Nation; and

''(C) shall expend the funds—

''(i) for any subjugation of land, development of water resources, or construction, operation, maintenance, or replacement of facilities within the San Xavier Reservation that is not required to be carried out by the United States under this title or any other provision of law;

''(ii) to provide governmental services, including—

''(I) programs for senior citizens;

''(II) health care services;

''(III) education;

''(IV) economic development loans and assistance; and

''(V) legal assistance programs;

''(iii) to provide benefits to allottees;

''(iv) to pay the costs of activities of the San Xavier Allottees Association; or

''(v) to pay any administrative costs incurred by the Nation or the San Xavier District in conjunction with any of the activities described in clauses (i) through (iv).

''(2) NO LIABILITY OF SECRETARY; LIMITATION.—

''(A) IN GENERAL.—The Secretary shall not—

''(i) be responsible for any review, approval, or audit of the use and expenditure of the funds described in paragraph (1); or

''(ii) be subject to liability for any claim or cause of action arising from the use or expenditure, by the Nation or the San Xavier District, of those funds.

''(B) LIMITATION.—No portion of any funds described in paragraph (1) shall be used for per capita payments to any individual member of the Nation or any allottee.

''SEC. 305. DELIVERIES UNDER EXISTING CONTRACT; ALTERNATIVE WATER SUPPLIES.

''(a) DELIVERY OF WATER.—

''(1) IN GENERAL.—The Secretary shall deliver water from the main project works of the Central Arizona Project, in such quantities, and in accordance with such terms and conditions, as are contained in the agreement of December 11, 1980, the 1982 Act, the agreement of October 11, 1983, and the Tohono O'odham settlement agreement (to the extent that the settlement agreement does not conflict with this Act), to 1 or more of—

''(A) the cooperative farm;

''(B) the eastern Schuk Toak District;

''(C) turnouts existing on the enforceability date; and

''(D) any other point of delivery on the Central Arizona Project main aqueduct that is agreed to by—

''(i) the Secretary;

''(ii) the operator of the Central Arizona Project; and

''(iii) the Nation.

''(2) DELIVERY.—The Secretary shall deliver the water covered by sections 304(a) and 306(a), or an equivalent quantity of water from a source identified under subsection (b)(1), notwithstanding—

''(A) any declaration by the Secretary of a water shortage on the Colorado River; or

''(B) any other occurrence affecting water delivery caused by an act or omission of—

''(i) the Secretary;

''(ii) the United States; or

''(iii) any officer, employee, contractor, or agent of the Secretary or United States.

''(b) ACQUISITION OF LAND AND WATER.—

''(1) DELIVERY.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), if the Secretary, under the terms and conditions of the agreements referred to in subsection (a)(1), is unable, during any year, to deliver annually from the main project works of the Central Arizona Project any portion of the quantity of water covered by sections 304(a) and 306(a), the Secretary shall identify, acquire and deliver an equivalent quantity of water from, any appropriate source.

''(B) EXCEPTION.—The Secretary shall not acquire any water under subparagraph (A) through any transaction that would cause depletion of groundwater supplies or aquifers in the San Xavier District or the eastern Schuk Toak District.

''(2) PRIVATE LAND AND INTERESTS.—

''(A) ACQUISITION.—

''(i) IN GENERAL.—Subject to subparagraph (B), the Secretary may acquire, for not more than market value, such private land, or interests in private land, that include rights in surface or groundwater recognized under State

law, as are necessary for the acquisition and delivery of water under this subsection.

''(ii) COMPLIANCE.—In acquiring rights in surface water under clause (i), the Secretary shall comply with all applicable severance and transfer requirements under State law.

''(B) PROHIBITION ON TAKING.—The Secretary shall not acquire any land, water, water rights, or contract rights under subparagraph (A) without the consent of the owner of the land, water, water rights, or contract rights.

''(C) PRIORITY.—In acquiring any private land or interest in private land under this paragraph, the Secretary shall give priority to the acquisition of land on which water has been put to beneficial use during any 1-year period during the 5-year period preceding the date of acquisition of the land by the Secretary.

''(3) DELIVERIES FROM ACQUIRED LAND.—Deliveries of water from land acquired under paragraph (2) shall be made only to the extent that the water may be transported within the Tucson management area under applicable law.

''(4) DELIVERY OF EFFLUENT.—

''(A) IN GENERAL.—Except on receipt of prior written consent of the Nation, the Secretary shall not deliver effluent directly to the Nation under this subsection.

''(B) NO SEPARATE DELIVERY SYSTEM.—The Secretary shall not construct a separate delivery system to deliver effluent to the San Xavier Reservation or the eastern Schuk Toak District.

''(C) NO IMPOSITION OF OBLIGATION.—Nothing in this paragraph imposes any obligation on the United States to deliver effluent to the Nation.

''(c) AGREEMENTS AND CONTRACTS.—To facilitate the delivery of water to the San Xavier Reservation and the eastern Schuk Toak District under this title, the Secretary may enter into a contract or agreement with the State, an irrigation district or project, or entity—

''(1) for—

''(A) the exchange of water; or

''(B) the use of aqueducts, canals, conduits, and other facilities (including pumping plants) for water delivery; or

''(2) to use facilities constructed, in whole or in part, with Federal funds.

''(d) COMPENSATION AND DISBURSEMENTS.—

''(1) COMPENSATION.—If the Secretary is unable to acquire and deliver sufficient quantities of water under section 304(a), this section, or section 306(a), the Secretary shall provide compensation in accordance with paragraph (2) in amounts equal to—

''(A)(i) the value of such quantities of water as are not acquired and delivered, if the delivery and distribution system for, and the improvements to, the irrigation system for the cooperative farm have not been completed by the deadline required under section 304(c)(1); or

''(ii) the value of such quantities of water as—

''(I) are ordered by the Nation for use by the San Xavier Cooperative Association in the irrigation system; but

''(II) are not delivered in any calendar year;

''(B)(i) the value of such quantities of water as are not acquired and delivered, if the extension of the irrigation system is not completed by the deadline required under section 304(c)(2); or

''(ii) the value of such quantities of water as—

''(I) are ordered by the Nation for use by the San Xavier Cooperative Association in the extension to the irrigation system; but

''(II) are not delivered in any calendar year; and

''(C)(i) the value of such quantities of water as are not acquired and delivered, if the irrigation system is not completed by the deadline required under section 304(c)(4); or

''(ii) except as provided in clause (i), the value of such quantities of water as—

''(I) are ordered by the Nation for use in the irrigation system, or for use by any person or entity (other than the San Xavier Cooperative Association); but

''(II) are not delivered in any calendar year.

''(2) DISBURSEMENT.—Any compensation payable under paragraph (1) shall be disbursed—

''(A) with respect to compensation payable under subparagraphs (A) and (B) of paragraph (1), to the San Xavier Cooperative Association; and

''(B) with respect to compensation payable under paragraph (1)(C), to the Nation for retention by the Nation or disbursement to water users, under the provisions of the water code or other applicable laws of the Nation.

''(e) NO EFFECT ON WATER RIGHTS.—Nothing in this section authorizes the Secretary to acquire or otherwise affect the water rights of any Indian tribe.

''SEC. 306. ADDITIONAL WATER DELIVERY.

''(a) IN GENERAL.—In addition to the delivery of water described in section 304(a), the Secretary shall deliver annually from the main project works of the Central Arizona Project, a total of 28,200 acre-feet of NIA priority water suitable for agricultural use, of which—

''(1) 23,000 acre-feet shall—

''(A) be delivered to, and used by, the San Xavier Reservation; or

''(B) otherwise be used by the Nation in accordance with section 309; and

''(2) 5,200 acre-feet shall—

''(A) be delivered to, and used by, the eastern Schuk Toak District; or

''(B) otherwise be used by the Nation in accordance with section 309.

''(b) STATE CONTRIBUTION.—To assist the Secretary in firming water under section 105(b)(1)(A) of the Arizona Water Settlements Act, the State shall contribute $3,000,000—

''(1) in accordance with a schedule that is acceptable to the Secretary and the State; and

''(2) in the form of cash or in-kind goods and services.

''SEC. 307. CONDITIONS ON CONSTRUCTION, WATER DELIVERY, REVENUE SHARING.

''(a) CONDITIONS ON ACTIONS OF SECRETARY.—The Secretary shall carry out section 304(c), subsections (a), (b), and (d) of section 305, and section 306, only if—

''(1) the Nation agrees—

''(A) except as provided in section 308(f)(1), to limit the quantity of groundwater withdrawn by nonexempt wells from beneath the San Xavier Reservation to not more than 10,000 acre-feet;

''(B) except as provided in section 308(f)(2), to limit the quantity of groundwater withdrawn by nonexempt wells from beneath the eastern Schuk Toak District to not more than 3,200 acre-feet;

''(C) to comply with water management plans established by the Secretary under section 308(d);

''(D) to consent to the San Xavier District being deemed a tribal organization (as defined in section 900.6 of title 25, Code of Federal Regulations (or any successor regulations)) for purposes identified in subparagraph (E)(iii)(I), as permitted with respect to tribal organizations under title I of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.);

''(E) subject to compliance by the Nation with other applicable provisions of part 900 of title 25, Code of Federal Regulations (or any successor regulations), to consent to contracting by the San Xavier District under section 311(b), on the conditions that—

''(i)(I) the plaintiffs in the Alvarez case and Tucson case have stipulated to the dismissal, with prejudice, of claims in those cases; and

''(II) those cases have been dismissed with prejudice;

''(ii) the San Xavier Cooperative Association has agreed to assume responsibility, after completion of each of the irrigation systems described in paragraphs (1), (2), and (3) of section 304(c) and on the delivery of water to those systems, for the operation, maintenance, and replacement of those systems in accordance with the first section of the Act of August 1, 1914 (25 U.S.C. 385); and

''(iii) with respect to the consent of the Nation to contracting—

''(I) the consent is limited solely to contracts for—

''(aa) the design and construction of the delivery and distribution system and the rehabilitation of the irrigation system for the cooperative farm;

''(bb) the extension of the irrigation system for the cooperative farm;

''(cc) the subjugation of land to be served by the extension of the irrigation system;

''(dd) the design and construction of storage facilities solely for water deliverable for use within the San Xavier Reservation; and

''(ee) the completion by the Secretary of a water resources study of the San Xavier Reservation and subsequent preparation of a water management plan under section 308(d);

''(II) the Nation shall reserve the right to seek retrocession or reassumption of contracts described in subclause (I), and recontracting under subpart P and other applicable provisions of part 900 of title 25, Code of Federal Regulations (or any successor regulations);

''(III) the Nation, on granting consent to such contracting, shall be released from any responsibility, liability, claim, or cost from and after the date on which consent is given, with respect to past action or inaction by the Nation, and subsequent action or inaction by the San Xavier District, relating to the design and construction of irrigation systems for the cooperative farm or the Central Arizona Project link pipeline; and

''(IV) the Secretary shall, on the request of the Nation, execute a waiver and release to carry out subclause (III);

''(F) to subjugate, at no cost to the United States, the land for which the irrigation systems under paragraphs (2) and (3) of section 304(c) will be planned, designed, and constructed by the Secretary, on the condition that—

''(i) the obligation of the Nation to subjugate the land in the cooperative farm that is to be served by the extension of the irrigation system under section 304(c)(2) shall be determined by the Secretary, in consultation with the Nation and the San Xavier Cooperative Association; and

''(ii) subject to approval by the Secretary of a contract with the San Xavier District executed under section 311, to perform that subjugation, a determination by the Secretary of the subjugation costs under clause (i), and the provision of notice by the San Xavier District to the Nation at least 180 days before the date on which the San Xavier District Council certifies by resolution that the subjugation is scheduled to commence, the Nation pays to the San Xavier District, not later than 90 days before the date on which the subjugation is scheduled to commence, from the trust fund under section 315, or from other sources of funds held by the Nation, the amount determined by the Secretary under clause (i); and

''(G) subject to business lease No. H54–16–72 dated April 26, 1972, of San Xavier Reservation land to Asarco and approved by the United States on Novermber 14, 1972, that the Nation—

''(i) shall allocate as a first right of beneficial use by allottees, the San Xavier District, and other persons within the San Xavier Reservation—

''(I) 35,000 acre-feet of the 50,000 acre-feet of water deliverable under sections 304(a)(1) and 306(a)(1), including the use of the allocation—

''(aa) to fulfill the obligations prescribed in the Asarco agreement; and

''(bb) for groundwater storage, maintenance of instream flows, and maintenance of riparian vegetation and habitat;

''(II) the 10,000 acre-feet of groundwater identified in subsection (a)(1)(A);

''(III) the groundwater withdrawn from exempt wells;

''(IV) the deferred pumping storage credits authorized by section 308(f)(1)(B); and

''(V) the storage credits resulting from a project authorized in section 308(e) that cannot

be lawfully transferred or otherwise disposed of to persons for recovery outside the Nation's Reservation;

''(ii) subject to section 309(b)(2), has the right—

''(I) to use, or authorize other persons or entities to use, any portion of the allocation of 35,000 acre-feet of water deliverable under sections 304(a)(1) and 306(a)(1) outside the San Xavier Reservation for any period during which there is no identified actual use of the water within the San Xavier Reservation;

''(II) as a first right of use, to use the remaining acre-feet of water deliverable under sections 304(a)(1) and 306(a)(1) for any purpose and duration authorized by this title within or outside the Nation's Reservation; and

''(III) subject to section 308(e), as an exclusive right, to transfer or otherwise dispose of the storage credits that may be lawfully transferred or otherwise disposed of to persons for recovery outside the Nation's Reservation;

''(iii) shall issue permits to persons or entities for use of the water resources referred to in clause (i);

''(iv) shall, on timely receipt of an order for water by a permittee under a permit for Central Arizona Project water referred to in clause (i), submit the order to—

''(I) the Secretary; or

''(II) the operating agency for the Central Arizona Project;

''(v) shall issue permits for water deliverable under sections 304(a)(2) and 306(a)(2), including quantities of water reasonably necessary for the irrigation system referred to in section 304(c)(3);

''(vi) shall issue permits for groundwater that may be withdrawn from nonexempt wells in the eastern Schuk Toak District; and

''(vii) shall, on timely receipt of an order for water by a permittee under a permit for water referred to in clause (v), submit the order to—

''(I) the Secretary; or

''(II) the operating agency for the Central Arizona Project; and

''(2) the Alvarez case and Tucson case have been dismissed with prejudice.

''(b) RESPONSIBILITIES ON COMPLETION.—On completion of an irrigation system or extension of an irrigation system described in paragraph (1) or (2) of section 304(c), or in the case of the irrigation system described in section 304(c)(3), if such irrigation system is constructed on individual Indian trust allotments, neither the United States nor the Nation shall be responsible for the operation, maintenance, or replacement of the system.

''(c) PAYMENT OF CHARGES.—The Nation shall not be responsible for payment of any water service capital charge for Central Arizona Project water delivered under section 304, subsection (a) or (b) of section 305, or section 306.

''SEC. 308. WATER CODE; WATER MANAGEMENT PLAN; STORAGE PROJECTS; STORAGE ACCOUNTS; GROUNDWATER.

''(a) WATER RESOURCES.—Water resources described in clauses (i) and (ii) of section 307(a)(1)(G)—

''(1) shall be subject to section 7 of the Act of February 8, 1887 (25 U.S.C. 381); and

''(2) shall be apportioned pursuant to clauses (i) and (ii) of section 307(a)(1)(G).

''(b) WATER CODE.—Subject to this title and any other applicable law, the Nation shall—

''(1) manage, regulate, and control the water resources of the Nation and the water resources granted or confirmed under this title;

''(2) establish conditions, limitations, and permit requirements, and promulgate regulations, relating to the storage, recovery, and use of surface water and groundwater within the Nation's Reservation;

''(3) enact and maintain—

''(A) an interim allottee water rights code that—

''(i) is consistent with subsection (a);

''(ii) prescribes the rights of allottees identified in paragraph (4); and

''(iii) provides that the interim allottee water rights code shall be incorporated in the comprehensive water code referred to in subparagraph (B); and

''(B) not later than 3 years after the enforceability date, a comprehensive water code applicable to the water resources granted or confirmed under this title;

''(4) include in each of the water codes enacted under subparagraphs (A) and (B) of paragraph (3)—

''(A) an acknowledgement of the rights described in subsection (a);

''(B) a process by which a just and equitable distribution of the water resources referred to in subsection (a), and any compensation provided under section 305(d), shall be provided to allottees;

''(C) a process by which an allottee may request and receive a permit for the use of any water resources referred to in subsection (a), except the water resources referred to in section 307(a)(1)(G)(ii)(III) and subject to the Nation's first right of use under section 307(a)(1)(G)(ii)(II);

''(D) provisions for the protection of due process, including—

''(i) a fair procedure for consideration and determination of any request by—

''(I) a member of the Nation, for a permit for use of available water resources granted or confirmed by this title; and

''(II) an allottee, for a permit for use of—

''(aa) the water resources identified in section 307(a)(1)(G)(i) that are subject to a first right of beneficial use; or

''(bb) subject to the first right of use of the Nation, available water resources identified in section 307(a)(1)(G)(i)(II);

''(ii) provisions for—

''(I) appeals and adjudications of denied or disputed permits; and

''(II) resolution of contested administrative decisions; and

''(iii) a waiver by the Nation of the sovereign immunity of the Nation only with respect to proceedings described in clause (ii) for claims of declaratory and injunctive relief; and

''(E) a process for satisfying any entitlement to the water resources referred to in section 307(a)(1)(G)(i) for which fee owners of allotted land have received final determinations under applicable law; and

''(5) submit to the Secretary the comprehensive water code, for approval by the Secretary only of the provisions of the water code (and any amendments to the water code), that implement, with respect to the allottees, the standards described in paragraph (4).

''(c) WATER CODE APPROVAL.—

''(1) IN GENERAL.—On receipt of a comprehensive water code under subsection (b)(5), the Secretary shall—

''(A) issue a written approval of the water code; or

''(B) provide a written notification to the Nation that—

''(i) identifies such provisions of the water code that do not conform to subsection (b) or other applicable Federal law; and

''(ii) recommends specific corrective language for each nonconforming provision.

''(2) REVISION BY NATION.—If the Secretary identifies nonconforming provisions in the water code under paragraph (1)(B)(i), the Nation shall revise the water code in accordance with the recommendations of the Secretary under paragraph (1)(B)(ii).

''(3) INTERIM AUTHORITY.—Until such time as the Nation revises the water code of the Nation in accordance with paragraph (2) and the Secretary subsequently approves the water code, the Secretary may exercise any lawful authority of the Secretary under section 7 of the Act of February 8, 1887 (25 U.S.C. 381).

''(4) LIMITATION.—Except as provided in this subsection, nothing in this title requires the approval of the Secretary of the water code of the Nation (or any amendment to that water code).

''(d) WATER MANAGEMENT PLANS.—

''(1) IN GENERAL.—The Secretary shall establish, for the San Xavier Reservation and the eastern Schuk Toak District, water management plans that meet the requirements described in paragraph (2).

''(2) REQUIREMENTS.—Water management plans established under paragraph (1)—

''(A) shall be developed under contracts executed under section 311 between the Secretary and the San Xavier District for the San XavierReservation, and between the Secretary and the Nation for the eastern Schuk Toak District, as applicable, that permit expenditures, exclusive of administrative expenses of the Secretary, of not more than—

''(i) with respect to a contract between the Secretary and the San Xavier District, $891,200; and

''(ii) with respect to a contract between the Secretary and the Nation, $237,200;

''(B) shall, at a minimum—

''(i) provide for the measurement of all groundwater withdrawals, including withdrawals from each well that is not an exempt well;

''(ii) provide for—

''(I) reasonable recordkeeping of water use, including the quantities of water stored underground and recovered each calendar year; and

''(II) a system for the reporting of withdrawals from each well that is not an exempt well;

''(iii) provide for the direct storage and deferred storage of water, including the implementation of underground storage and recovery projects, in accordance with this section;

''(iv) provide for the annual exchange of information collected under clauses (i) through (iii)—

''(I) between the Nation and the Arizona Department of Water Resources; and

''(II) between the Nation and the city of Tucson, Arizona;

''(v) provide for—

''(I) the efficient use of water; and

''(II) the prevention of waste;

''(vi) except on approval of the district council for a district in which a direct storage project is established under subsection (e), provide that no direct storage credits earned as a result of the project shall be recovered at any location at which the recovery would adversely affect surface or groundwater supplies, or lower the water table at any location, within the district; and

''(vii) provide for amendments to the water plan in accordance with this title;

''(C) shall authorize the establishment and maintenance of 1 or more underground storage and recovery projects in accordance with subsection (e), as applicable, within—

''(i) the San Xavier Reservation; or

''(ii) the eastern Schuk Toak District; and

''(D) shall be implemented and maintained by the Nation, with no obligation by the Secretary.

''(e) UNDERGROUND STORAGE AND RECOVERY PROJECTS.—The Nation is authorized to establish direct storage and recovery projects in accordance with the Tohono O'odham settlement agreement. The Secretary shall have no responsibility to fund or otherwise administer such projects.

''(f) GROUNDWATER.—

''(1) SAN XAVIER RESERVATION.—

''(A) IN GENERAL.—In accordance with section 307(a)(1)(A), 10,000 acre-feet of groundwater may be pumped annually within the San Xavier Reservation.

''(B) DEFERRED PUMPING.—

''(i) IN GENERAL.—Subject to clause (ii), all or any portion of the 10,000 acre-feet of water not pumped under subparagraph (A) in a year—

''(I) may be withdrawn in a subsequent year; and

''(II) if any of that water is withdrawn, shall be accounted for in accordance with the Tohono O'odham settlement agreement as a debit to the deferred pumping storage account.

''(ii) LIMITATION.—The quantity of water authorized to be recovered as deferred pumping storage credits under this subparagraph shall not exceed—

''(I) 50,000 acre-feet for any 10-year period; or

''(II) 10,000 acre-feet in any year.

''(C) RECOVERY OF ADDITIONAL WATER.—In addition to the quantity of groundwater authorized to be pumped under subparagraphs (A) and (B), the Nation may annually recover within the San Xavier Reservation all or a portion of the credits for water stored under a project described in subsection (e).

''(2) EASTERN SCHUK TOAK DISTRICT.—

''(A) IN GENERAL.—In accordance with section 307(a)(1)(B), 3,200 acre-feet of groundwater may be pumped annually within the eastern Schuk Toak District.

''(B) DEFERRED PUMPING.—

''(i) IN GENERAL.—Subject to clause (ii), all or any portion of the 3,200 acre-feet of water not pumped under subparagraph (A) in a year—

''(I) may be withdrawn in a subsequent year; and

''(II) if any of that water is withdrawn, shall be accounted for in accordance with the Tohono O'odham settlement agreement as a debit to the deferred pumping storage account.

''(ii) LIMITATION.—The quantity of water authorized to be recovered as deferred pumping storage credits under this subparagraph shall not exceed—

''(I) 16,000 acre-feet for any 10-year period; or

''(II) 3,200 acre-feet in any year.

''(C) RECOVERY OF ADDITIONAL WATER.—In addition to the quantity of groundwater authorized to be pumped under subparagraphs (A) and (B), the Nation may annually recover within the eastern Schuk Toak District all or a portion of the credits for water stored under a project described in subsection (e).

''(3) INABILITY TO RECOVER GROUNDWATER.—

''(A) IN GENERAL.—The authorizations to pump groundwater in paragraphs (1) and (2) neither warrant nor guarantee that the groundwater—

''(i) physically exists; or

''(ii) is recoverable.

''(B) CLAIMS.—With respect to groundwater described in subparagraph (A)—

''(i) subject to paragraph 8.8 of the Tohono O'odham settlement agreement, the inability of any person to pump or recover that groundwater shall not be the basis for any claim by the United States or the Nation against any person or entity withdrawing or using the water from any common supply; and

''(ii) the United States and the Nation shall be barred from asserting any and all claims for reserved water rights with respect to that groundwater.

''(g) EXEMPT WELLS.—Any groundwater pumped from an exempt well located within the San Xavier Reservation or the eastern Schuk Toak District shall be exempt from all pumping limitations under this title.

''(h) INABILITY OF SECRETARY TO DELIVER WATER.—The Nation is authorized to pump additional groundwater in any year in which the Secretary is unable to deliver water required to carry out sections 304(a) and 306(a) in accordance with the Tohono O'odham settlement agreement.

''(i) PAYMENT OF COMPENSATION.—Nothing in this section affects any obligation of the Secretary to pay compensation in accordance with section 305(d).

''SEC. 309. USES OF WATER.

''(a) PERMISSIBLE USES.—Subject to other provisions of this section and other applicable law, the Nation may devote all water supplies granted or confirmed under this title, whether delivered by the Secretary or pumped by the Nation, to any use (including any agricultural, municipal, domestic, industrial, commercial, mining, underground storage, instream flow, riparian habitat maintenance, or recreational use).

''(b) USE AREA.—

''(1) USE WITHIN NATION'S RESERVATION.—Subject to subsection (d), the Nation may use at any location within the Nation's Reservation—

''(A) the water supplies acquired under sections 304(a) and 306(a);

''(B) groundwater supplies; and

''(C) storage credits acquired as a result of projects authorized under section 308(e), or deferred storage credits described in section 308(f), except to the extent that use of those storage credits causes the withdrawal of groundwater in violation of applicable Federal law.

''(2) USE OUTSIDE THE NATION'S RESERVATION.—

''(A) IN GENERAL.—Water resources granted or confirmed under this title may be sold, leased, transferred, or used by the Nation outside of the Nation's Reservation only in accordance with this title.

''(B) USE WITHIN CERTAIN AREA.—Subject to subsection (c), the Nation may use the Central Arizona Project water supplies acquired under sections 304(a) and 306(a) within the Central Arizona Project service area.

''(C) STATE LAW.—With the exception of Central Arizona Project water and groundwater withdrawals under the Asarco agreement, the Nation may sell, lease, transfer, or use any water supplies and storage credits acquired as a result of a project authorized under section 308(e) at any location outside of the Nation's Reservation, but within the State, only in accordance with State law.

''(D) LIMITATION.—Deferred pumping storage credits provided for in section 308(f) shall not be sold, leased, transferred, or used outside the Nation's Reservation.

''(E) PROHIBITION ON USE OUTSIDE THE STATE.—No water acquired under section 304(a) or 306(a) shall be leased, exchanged, forborne, or otherwise transferred by the Nation for any direct or indirect use outside the State.

''(c) EXCHANGES AND LEASES; CONDITIONS ON EXCHANGES AND LEASES.—

''(1) IN GENERAL.—With respect to users outside the Nation's Reservation, the Nation may, for a term of not to exceed 100 years, assign, exchange, lease, provide an option to lease, or otherwise temporarily dispose of to the users, Central Arizona Project water to which the Nation is entitled under sections 304(a) and 306(a) or storage credits acquired under section 308(e), if the assignment, exchange, lease, option, or temporary disposal is carried out in accordance with—

''(A) this subsection; and

''(B) subsection (b)(2).

''(2) LIMITATION ON ALIENATION.—The Nation shall not permanently alienate any water right under paragraph (1).

''(3) AUTHORIZED USES.—The water described in paragraph (1) shall be delivered within the Central Arizona Project service area for any use authorized under applicable law.

''(4) CONTRACT.—An assignment, exchange, lease, option, or temporary disposal described in paragraph (1) shall be executed only in accordance with a contract that—

''(A) is accepted by the Nation;

''(B) is ratified under a resolution of the Legislative Council of the Nation;

''(C) is approved by the United States as Trustee; and

''(D) with respect to any contract to which the United States or the Secretary is a party, provides that an action may be maintained by the contracting party against the United States and the Secretary for a breach of the contract by the United States or Secretary, as appropriate.

''(5) TERMS EXCEEDING 25 YEARS.—The terms and conditions established in paragraph 11 of the Tohono O'odham settlement agreement shall apply to any contract under paragraph (4) that has a term of greater than 25 years.

''(d) LIMITATIONS ON USE, EXCHANGES, AND LEASES.—The rights of the Nation to use water supplies under subsection (a), and to assign, exchange, lease, provide options to lease, or temporarily dispose of the water supplies under subsection (c), shall be exercised on conditions that ensure the availability of water supplies to satisfy the first right of beneficial use under section 307(a)(1)(G)(i).

''(e) WATER SERVICE CAPITAL CHARGES.—In any transaction entered into by the Nation and another person under subsection (c) with respect to Central Arizona Project water of the Nation, the person shall not be obligated to pay to the United States or the Central Arizona Water Conservation District any water service capital charge.

''(f) WATER RIGHTS UNAFFECTED BY USE OR NONUSE.—The failure of the Nation to make use of water provided under this title, or the use of, or failure to make use of, that water by any other person that enters into a contract with the Nation under subsection (c) for the assignment, exchange, lease, option for lease, or temporary disposal of water, shall not diminish, reduce, or impair—

''(1) any water right of the Nation, as established under this title or any other applicable law; or

''(2) any water use right recognized under this title, including—

''(A) the first right of beneficial use referred to in section 307(a)(1)(G)(i); or

''(B) the allottee use rights referred to in section 308(a).

''(g) AMENDMENT TO AGREEMENT OF DECEMBER 11, 1980.—The Secretary shall amend the agreement of December 11, 1980, to provide that—

''(1) the contract shall be—

''(A) for permanent service (within the meaning of section 5 of the Boulder Canyon Project Act of 1928 (43 U.S.C. 617d)); and

''(B) without limit as to term;

''(2) the Nation may, with the approval of the Secretary—

''(A) in accordance with subsection (c), assign, exchange, lease, enter into an option to lease, or otherwise temporarily dispose of water to which the Nation is entitled under sections 304(a) and 306(a); and

''(B) renegotiate any lease at any time during the term of the lease if the term of the renegotiated lease does not exceed 100 years;

''(3)(A) the Nation shall be entitled to all consideration due to the Nation under any leases and any options to lease or exchanges or options to exchange the Nation's Central Arizona Project water entered into by the Nation; and

''(B) the United States shall have no trust obligation or other obligation to monitor, administer, or account for any consideration received by the Nation under those leases or options to lease and exchanges or options to exchange;

''(4)(A) all of the Nation's Central Arizona Project water shall be delivered through the Central Arizona Project aqueduct; and

''(B) if the delivery capacity of the Central Arizona Project aqueduct is significantly reduced or is anticipated to be significantly reduced for an extended period of time, the Nation shall have the same Central Arizona Project delivery rights as other Central Arizona Project contractors and Central Arizona Project subcontractors, if the Central Arizona Project contractors or Central Arizona Project subcontractors are allowed to take delivery of water other than through the Central Arizona Project aqueduct;

''(5) the Nation may use the Nation's Central Arizona Project water on or off of the Nation's Reservation for the purposes of the Nation consistent with this title;

''(6) as authorized by subparagraph (A) of section 403(f)(2) of the Colorado River Basin Project Act (43 U.S.C. 1543(f)(2)) (as amended by section 107(a)) and to the extent that funds are available in the Lower Colorado River Basin Development Fund established by section 403 of that Act (43 U.S.C. 1543), the United States shall

pay to the Central Arizona Project operating agency the fixed operation, maintenance, and replacement charges associated with the delivery of the Nation's Central Arizona Project water, except for the Nation's Central Arizona Project water leased by others;

''(7) the allocated costs associated with the construction of the delivery and distribution system—

''(A) shall be nonreimbursable; and

''(B) shall be excluded from any repayment obligation of the Nation;

''(8) no water service capital charges shall be due or payable for the Nation's Central Arizona Project water, regardless of whether the Central Arizona Project water is delivered for use by the Nation or is delivered pursuant to any leases or options to lease or exchanges or options to exchange the Nation's Central Arizona Project water entered into by the Nation;

''(9) the agreement of December 11, 1980, conforms with section 104(d) and section 306(a) of the Arizona Water Settlements Act; and

''(10) the amendments required by this subsection shall not apply to the 8,000 acre feet of Central Arizona Project water contracted by the Nation in the agreement of December 11, 1980, for the Sif Oidak District.

''(h) RATIFICATION OF AGREEMENTS.—

''(1) IN GENERAL.—Notwithstanding any other provision of law, each agreement described in paragraph (2), to the extent that the agreement is not in conflict with this Act—

''(A) is authorized, ratified, and confirmed; and

''(B) shall be executed by the Secretary.

''(2) AGREEMENTS.—The agreements described in this paragraph are—

''(A) the Tohono O'odham settlement agreement, to the extent that—

''(i) the Tohono O'odham settlement agreement is consistent with this title; and

''(ii) parties to the Tohono O'odham settlement agreement other than the Secretary have executed that agreement;

''(B) the Tucson agreement (attached to the Tohono O'odham settlement agreement as exhibit 12.1); and

''(C)(i) the Asarco agreement (attached to the Tohono O'odham settlement agreement as exhibit 13.1 to the Tohono O'odham settlement agreement);

''(ii) lease No. H54–0916–0972, dated April 26, 1972, and approved by the United States on November 14, 1972; and

''(iii) any new well site lease as provided for in the Asarco agreement; and

''(D) the FICO agreement (attached to the Tohono O'odham settlement agreement as Exhibit 14.1).

''(3) RELATION TO OTHER LAW.—

''(A) IN GENERAL.—Execution of an agreement described in paragraph (2) shall not constitute major Federal action under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

''(B) ENVIRONMENTAL COMPLIANCE ACTIVITIES.—The Secretary shall carry out all necessary environmental compliance activities during the implementation of the agreements described in paragraph (2), including activities under—

''(i) the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.); and

''(ii) the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.).

''(C) LEAD AGENCY.—The Bureau of Reclamation shall be the lead agency with respect to environmental compliance under the agreements described in paragraph (2).

''(i) DISBURSEMENTS FROM TUCSON INTERIM WATER LEASE.—The Secretary shall disburse to the Nation, without condition, all proceeds from the Tucson interim water lease.

''(j) USE OF GROSS PROCEEDS.—

''(1) DEFINITION OF GROSS PROCEEDS.—In this subsection, the term 'gross proceeds' means all proceeds, without reduction, received by the Nation from—

''(A) the Tucson interim water lease;

''(B) the Asarco agreement; and

''(C) any agreement similar to the Asarco agreement to store Central Arizona Project water of the Nation, instead of pumping groundwater, for the purpose of protecting water of the Nation; provided, however, that gross proceeds shall not include proceeds from the transfer of Central Arizona Project water in excess of 20,000 acre feet annually pursuant to any agreement under this subparagraph or under the Asarco agreement referenced in subparagraph (B).

''(2) ENTITLEMENT.—The Nation shall be entitled to receive all gross proceeds.

''(k) STATUTORY CONSTRUCTION.—Nothing in this title establishes whether reserved water may be put to use, or sold for use, off any reservation to which reserved water rights attach.

''SEC. 310. COOPERATIVE FUND.

''(a) REAUTHORIZATION.—

''(1) IN GENERAL.—Congress reauthorizes, for use in carrying out this title, the cooperative fund established in the Treasury of the United States by section 313 of the 1982 Act.

''(2) AMOUNTS IN COOPERATIVE FUND.—The cooperative fund shall consist of—

''(A)(i) $5,250,000, as appropriated to the cooperative fund under section 313(b)(3)(A) of the 1982 Act; and

''(ii) such amount, not to exceed $32,000,000, as the Secretary determines, after providing notice to Congress, is necessary to carry out this title;

''(B) any additional Federal funds deposited to the cooperative fund under Federal law;

''(C) $5,250,000, as deposited in the cooperative fund under section 313(b)(1)(B) of the 1982 Act, of which—

''(i) $2,750,000 was contributed by the State;

''(ii) $1,500,000 was contributed by the city of Tucson; and

''(iii) $1,000,000 was contributed by—

''(I) the Anamax Mining Company;

''(II) the Cyprus-Pima Mining Company;

''(III) the American Smelting and Refining Company;

''(IV) the Duval Corporation; and

''(V) the Farmers Investment Company;

''(D) all interest accrued on all amounts in the cooperative fund beginning on October 12, 1982, less any interest expended under subsection (b)(2); and

''(E) all revenues received from—

''(i) the sale or lease of effluent received by the Secretary under the contract between the United States and the city of Tucson to provide for delivery of reclaimed water to the Secretary, dated October 11, 1983; and

''(ii) the sale or lease of storage credits derived from the storage of that effluent.

''(b) EXPENDITURES FROM FUND.—

''(1) IN GENERAL.—Subject to paragraph (2), upon request by the Secretary, the Secretary of the Treasury shall transfer from the cooperative fund to the Secretary such amounts as the Secretary determines are necessary to carry out obligations of the Secretary under this title, including to pay—

''(A) the variable costs relating to the delivery of water under sections 304 through 306;

''(B) fixed operation maintenance and replacement costs relating to the delivery of water under sections 304 through 306, to the extent that funds are not available from the Lower Colorado River Basin Development Fund to pay those costs;

''(C) the costs of acquisition and delivery of water from alternative sources under section 305; and

''(D) any compensation provided by the Secretary under section 305(d).

''(2) EXPENDITURE OF INTEREST.—Except as provided in paragraph (3), the Secretary may expend only interest income accruing to the cooperative fund, and that interest income may be expended by the Secretary, without further appropriation.

''(3) EXPENDITURE OF REVENUES.—Revenues described in subsection (a)(2)(E) shall be available for expenditure under paragraph (1).

''(c) INVESTMENT OF AMOUNTS.—

''(1) IN GENERAL.—The Secretary of the Treasury shall invest such portion of the cooperative fund as is not, in the judgment of the Secretary of the Treasury, required to meet current withdrawals determined by the Secretary. Investments may be made only in interest-bearing obligations of the United States.

''(2) CREDITS TO COOPERATIVE FUND.—The interest on, and the proceeds from the sale or redemption of, any obligations held in the cooperative fund shall be credited to and form a part of the cooperative fund.

''(d) TRANSFERS OF AMOUNTS.—

''(1) IN GENERAL.—The amounts required to be transferred to the cooperative fund under this section shall be transferred at least monthly from the general fund of the Treasury to the cooperative fund on the basis of estimates made by the Secretary of the Treasury.

''(2) ADJUSTMENTS.—Proper adjustment shall be made in amounts subsequently transferred to the extent prior estimates were in excess of or less than the amounts required to be transferred.

''(e) DAMAGES.—Damages arising under this title or any contract for the delivery of water recognized by this title shall not exceed, in any given year, the amounts available for expenditure in that year from the cooperative fund.

''SEC. 311. CONTRACTING AUTHORITY; WATER QUALITY; STUDIES; ARID LAND ASSISTANCE.

''(a) FUNCTIONS OF SECRETARY.—Except as provided in subsection (f), the functions of the Secretary (or the Commissioner of Reclamation, acting on behalf of the Secretary) under this title shall be subject to the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.) to the same extent as if those functions were carried out by the Assistant Secretary for Indian Affairs.

''(b) SAN XAVIER DISTRICT AS CONTRACTOR.—

''(1) IN GENERAL.—Subject to the consent of the Nation and other requirements under section 307(a)(1)(E), the San Xavier District shall be considered to be an eligible contractor for purposes of this title.

''(2) TECHNICAL ASSISTANCE.—The Secretary shall provide to the San Xavier District technical assistance in carrying out the contracting requirements under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.).

''(c) GROUNDWATER MONITORING PROGRAMS.—

''(1) SAN XAVIER INDIAN RESERVATION PROGRAM.—

''(A) IN GENERAL.—Not later than 180 days after the enforceability date, the Secretary shall develop and initiate a comprehensive groundwater monitoring program (including the drilling of wells and other appropriate actions) to test, assess, and provide for the long-term monitoring of the quality of groundwater withdrawn from exempt wells and other wells within the San Xavier Reservation.

''(B) LIMITATION ON EXPENDITURES.—In carrying out this paragraph, the Secretary shall expend not more than $215,000.

''(2) EASTERN SCHUK TOAK DISTRICT PROGRAM.—

''(A) IN GENERAL.—Not later than 180 days after the enforceability date, the Secretary shall develop and initiate a comprehensive groundwater monitoring program (including the drilling of wells and other appropriate actions) to test, assess, and provide for the long-term monitoring of the quality of groundwater withdrawn from exempt wells and other wells within the eastern Schuk Toak District.

''(B) LIMITATION ON EXPENDITURES.—In carrying out this paragraph, the Secretary shall expend not more than $175,000.

''(3) DUTIES OF SECRETARY.—

''(A) CONSULTATION.—In carrying out paragraphs (1) and (2), the Secretary shall consult with representatives of—

''(i) the Nation;

''(ii) the San Xavier District and Schuk Toak District, respectively; and

''(iii) appropriate State and local entities.

''(B) LIMITATION ON OBLIGATIONS OF SECRETARY.—With respect to the groundwater monitoring programs described in paragraphs (1) and (2), the Secretary shall have no continuing obligation relating to those programs beyond the obligations described in those paragraphs.

''(d) WATER RESOURCES STUDY.—To assist the Nation in developing sources of water, the Secretary shall conduct a study to determine the availability and suitability of water resources that are located—

''(1) within the Nation's Reservation; but

''(2) outside the Tucson management area.

''(e) ARID LAND RENEWABLE RESOURCES.—If a Federal entity is established to provide financial assistance to carry out arid land renewable resources projects and to encourage and ensure investment in the development of domestic sources of arid land renewable resources, the entity shall—

''(1) give first priority to the needs of the Nation in providing that assistance; and

''(2) make available to the Nation, San Xavier District, Schuk Toak District, and San Xavier Cooperative Association price guarantees, loans, loan guarantees, purchase agreements, and joint venture projects at a level that the entity determines will—

''(A) facilitate the cultivation of such minimum number of acres as is determined by the entity to be necessary to ensure economically successful cultivation of arid land crops; and

''(B) contribute significantly to the economy of the Nation.

''(f) ASARCO LAND EXCHANGE STUDY.—

''(1) IN GENERAL.—Not later than 2 years after the enforceability date, the Secretary, in consultation with the Nation, the San Xavier District, the San Xavier Allottees' Association, and Asarco, shall conduct and submit to Congress a study on the feasibility of a land exchange or land exchanges with Asarco to provide land for future use by—

''(A) beneficial landowners of the Mission Complex Mining Leases of September 18, 1959; and

''(B) beneficial landowners of the Mission Complex Business Leases of May 12, 1959.

''(2) COMPONENTS.—The study under paragraph (1) shall include—

''(A) an analysis of the manner in which land exchanges could be accomplished to maintain a contiguous land base for the San Xavier Reservation; and

''(B) a description of the legal status exchanged land should have to maintain the political integrity of the San Xavier Reservation.

''(3) LIMITATION ON EXPENDITURES.—In carrying out this subsection, the Secretary shall expend not more than $250,000.

''SEC. 312. WAIVER AND RELEASE OF CLAIMS.

''(a) WAIVER OF CLAIMS BY THE NATION.—Except as provided in subsection (d), the Tohono O'odham settlement agreement shall provide that the Nation waives and releases—

''(1) any and all past, present, and future claims for water rights (including claims based on aboriginal occupancy) arising from time immemorial and, thereafter, forever, and claims for injuries to water rights arising from time immemorial through the enforceability date, for land within the Tucson management area, against—

''(A) the State (or any agency or political subdivision of the State);

''(B) any municipal corporation; and

''(C) any other person or entity;

''(2) any and all claims for water rights arising from time immemorial and, thereafter, forever, claims for injuries to water rights arising from time immemorial through the enforceability date, and claims for failure to protect, acquire, or develop water rights for land within the San Xavier Reservation and the eastern Schuk Toak District from time immemorial through the enforceability date, against the United States (including any agency, officer, and employee of the United States);

''(3) any and all claims for injury to water rights arising after the enforceability date for land within the San Xavier Reservation and the eastern Schuk Toak District resulting from the off-Reservation diversion or use of water in a manner not in violation of the Tohono O'odham settlement agreement or State law against—

''(A) the United States;

''(B) the State (or any agency or political subdivision of the State);

''(C) any municipal corporation; and

''(D) any other person or entity; and

''(4) any and all past, present, and future claims arising out of or relating to the negotiation or execution of the Tohono O'odham settlement agreement or the negotiation or enactment of this title, against—

''(A) the United States;

''(B) the State (or any agency or political subdivision of the State);

''(C) any municipal corporation; and

''(D) any other person or entity.

''(b) WAIVER OF CLAIMS BY THE ALLOTTEE CLASSES.—The Tohono O'odham settlement agreement shall provide that each allottee class waives and releases—

''(1) any and all past, present, and future claims for water rights (including claims based on aboriginal occupancy) arising from time immemorial and, thereafter, forever, claims for injuries to water rights arising from time immemorial through the enforceability date for land within the San Xavier Reservation, against—

''(A) the State (or any agency or political subdivision of the State);

''(B) any municipal corporation; and

''(C) any other person or entity (other than the Nation);

''(2) any and all claims for water rights arising from time immemorial and, thereafter, forever, claims for injuries to water rights arising from time immemorial through the enforceability date, and claims for failure to protect, acquire, or develop water rights for land within the San Xavier Reservation from time immemorial through the enforceability date, against the United States (including any agency, officer, and employee of the United States);

''(3) any and all claims for injury to water rights arising after the enforceability date for land within the San Xavier Reservation resulting from the off-Reservation diversion or use of water in a manner not in violation of the Tohono O'odham settlement agreement or State law against—

''(A) the United States;

''(B) the State (or any agency or political subdivision of the State);

''(C) any municipal corporation; and

''(D) any other person or entity;

''(4) any and all past, present, and future claims arising out of or relating to the negotiation or execution of the Tohono O'odham settlement agreement or the negotiation or enactment of this title, against—

''(A) the United States;

''(B) the State (or any agency or political subdivision of the State);

''(C) any municipal corporation; and

''(D) any other person or entity; and

''(5) any and all past, present, and future claims for water rights arising from time immemorial and, thereafter, forever, and claims for injuries to water rights arising from time immemorial through the enforceability date, against the Nation (except that under section 307(a)(1)(G) and subsections (a) and (b) of section 308, the allottees and fee owners of allotted land shall retain rights to share in the water resources granted or confirmed under this title and the Tohono O'odham settlement agreement with respect to uses within the San Xavier Reservation).

''(c) WAIVER OF CLAIMS BY THE UNITED STATES.—Except as provided in subsection (d), the Tohono O'odham settlement agreement shall provide that the United States as Trustee waives and releases—

''(1) any and all past, present, and future claims for water rights (including claims based on aboriginal occupancy) arising from time immemorial and, thereafter, forever, and claims for injuries to water rights arising from time immemorial through the enforceability date, for land within the Tucson management area against—

''(A) the Nation;

''(B) the State (or any agency or political subdivision of the State);

''(C) any municipal corporation; and

''(D) any other person or entity;

''(2) any and all claims for injury to water rights arising after the enforceability date for land within the San Xavier Reservation and the eastern Schuk Toak District resulting from the off-Reservation diversion or use of water in a manner not in violation of the Tohono O'odham settlement agreement or State law against—

''(A) the Nation;

''(B) the State (or any agency or political subdivision of the State);

''(C) any municipal corporation; and

''(D) any other person or entity;

''(3) on and after the enforceability date, any and all claims on behalf of the allottees for injuries to water rights against the Nation (except that under section 307(a)(1)(G) and subsections (a) and (b) of section 308, the allottees shall retain rights to share in the water resources granted or confirmed under this title and the Tohono O'odham settlement agreement with respect to uses within the San Xavier Reservation); and

''(4) claims against Asarco on behalf of the allottee class for the fourth cause of action in Alvarez v. City of Tucson (Civ. No. 93–039 TUC FRZ (D. Ariz., filed April 21, 1993)), in accordance with the terms and conditions of the Asarco agreement.

''(d) CLAIMS RELATING TO GROUNDWATER PROTECTION PROGRAM.—The Nation and the United States as Trustee—

''(1) shall have the right to assert any claims granted by a State law implementing the groundwater protection program described in paragraph 8.8 of the Tohono O'odham settlement agreement; and

''(2) if, after the enforceability date, the State law is amended so as to have a material adverse effect on the Nation, shall have a right to relief in the State court having jurisdiction over Gila River adjudication proceedings and decrees, against an owner of any nonexempt well drilled after the effective date of the amendment (if the well actually and substantially interferes with groundwater pumping occurring on the San Xavier Reservation), from the incremental effect of the groundwater pumping that exceeds that which would have been allowable had the State law not been amended.

''(e) SUPPLEMENTAL WAIVERS OF CLAIMS.—Any party to the Tohono O'odham settlement agreement may waive and release, prohibit the assertion of, or agree not to assert, any claims (including claims for subsidence damage or injury to water quality) in addition to claims for water rights and injuries to water rights on such terms and conditions as may be agreed to by the parties.

''(f) RIGHTS OF ALLOTTEES; PROHIBITION OF CLAIMS.—

''(1) IN GENERAL.—As of the enforceability date—

''(A) the water rights and other benefits granted or confirmed by this title and the Tohono O'odham settlement agreement shall be in full satisfaction of—

''(i) all claims for water rights and claims for injuries to water rights of the Nation; and

''(ii) all claims for water rights and injuries to water rights of the allottees;

''(B) any entitlement to water within the Tucson management area of the Nation, or of any allottee, shall be satisfied out of the water resources granted or confirmed under this title

and the Tohono O'odham settlement agreement; and

''(C) any rights of the allottees to groundwater, surface water, or effluent shall be limited to the water rights granted or confirmed under this title and the Tohono O'odham settlement agreement.

''(2) LIMITATION OF CERTAIN CLAIMS BY ALLOTTEES.—No allottee within the San Xavier Reservation may—

''(A) assert any past, present, or future claim for water rights arising from time immemorial and, thereafter, forever, or any claim for injury to water rights (including future injury to water rights) arising from time immemorial and thereafter, forever, against—

''(i) the United States;

''(ii) the State (or any agency or political subdivision of the State);

''(iii) any municipal corporation; or

''(iv) any other person or entity; or

''(B) continue to assert a claim described in subparagraph (A), if the claim was first asserted before the enforceability date.

''(3) CLAIMS BY FEE OWNERS OF ALLOTTED LAND.—

''(A) IN GENERAL.—No fee owner of allotted land within the San Xavier Reservation may assert any claim to the extent that—

''(i) the claim has been waived and released in the Tohono O'odham settlement agreement; and

''(ii) the fee owner of allotted land asserting the claim is a member of the applicable allottee class.

''(B) OFFSET.—Any benefits awarded to a fee owner of allotted land as a result of a successful claim shall be offset by benefits received by that fee owner of allotted land under this title.

''(4) LIMITATION OF CLAIMS AGAINST THE NATION.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), no allottee may assert against the Nation any claims for water rights arising from time immemorial and, thereafter, forever, claims for injury to water rights arising from time immemorial and thereafter forever.

''(B) EXCEPTION.—Under section 307(a)(1)(G) and subsections (a) and (b) of section 308, the allottees shall retain rights to share in the water resources granted or confirmed under this title and the Tohono O'odham settlement agreement.

''(g) CONSENT.—

''(1) GRANT OF CONSENT.—Congress grants to the Nation and the San Xavier Cooperative Association under section 305(d) consent to maintain civil actions against the United States in the courts of the United States under section 1346, 1491, or 1505 of title 28, United States Code, respectively, to recover damages, if any, for the breach of any obligation of the Secretary under those sections.

''(2) REMEDY.—

''(A) IN GENERAL.—Subject to subparagraph (B), the exclusive remedy for a civil action maintained under this subsection shall be monetary damages.

''(B) OFFSET.—An award for damages for a claim under this subsection shall be offset against the amount of funds—

''(i) made available by any Act of Congress; and

''(ii) paid to the claimant by the Secretary in partial or complete satisfaction of the claim.

''(3) NO CLAIMS ESTABLISHED.—Except as provided in paragraph (1), nothing in the subsection establishes any claim against the United States.

''(h) JURISDICTION; WAIVER OF IMMUNITY; PARTIES.—

''(1) JURISDICTION.—

''(A) IN GENERAL.—Except as provided in subsection (i), the State court having jurisdiction over Gila River adjudication proceedings and decrees, shall have jurisdiction over—

''(i) civil actions relating to the interpretation and enforcement of—

''(I) this title;

''(II) the Tohono O'odham settlement agreement; and

''(III) agreements referred to in section 309(h)(2); and

''(ii) civil actions brought by or against the allottees or fee owners of allotted land for the interpretation of, or legal or equitable remedies with respect to, claims of the allottees or fee owners of allotted land that are not claims for water rights, injuries to water rights or other claims that are barred or waived and released under this title or the Tohono O'odham settlement agreement.

''(B) LIMITATION.—Except as provided in subparagraph (A), no State court or court of the Nation shall have jurisdiction over any civil action described in subparagraph (A).

''(2) WAIVER.—

''(A) IN GENERAL.—The United States and the Nation waive sovereign immunity solely for claims for—

''(i) declaratory judgment or injunctive relief in any civil action arising under this title; and

''(ii) such claims and remedies as may be prescribed in any agreement authorized under this title.

''(B) LIMITATION ON STANDING.—If a governmental entity not described in subparagraph (A) asserts immunity in any civil action that arises under this title (unless the entity waives immunity for declaratory judgment or injunctive relief) or any agreement authorized under this title (unless the entity waives immunity for the claims and remedies prescribed in the agreement)—

''(i) the governmental entity shall not have standing to initiate or assert any claim, or seek any remedy against the United States or the Nation, in the civil action; and

''(ii) the waivers of sovereign immunity under subparagraph (A) shall have no effect in the civil action.

''(C) MONETARY RELIEF.—A waiver of immunity under this paragraph shall not extend to any claim for damages, costs, attorneys' fees, or other monetary relief.

''(3) NATION AS A PARTY.—

''(A) IN GENERAL.—Not later than 60 days before the date on which a civil action under paragraph (1)(A)(ii) is filed by an allottee or fee owner of allotted land, the allottee or fee owner, as the case may be, shall provide to the Nation a notice of intent to file the civil action, accompanied by a request for consultation.

''(B) JOINDER.—If the Nation is not a party to a civil action as originally commenced under paragraph (1)(A)(ii), the Nation shall be joined as a party.

''(i) REGULATION AND JURISDICTION OVER DISPUTE RESOLUTION.—

''(1) REGULATION.—The Nation shall have jurisdiction to manage, control, permit, administer, and otherwise regulate the water resources granted or confirmed under this title and the Tohono O'odham settlement agreement—

''(A) with respect to the use of those resources by—

''(i) the Nation;

''(ii) individual members of the Nation;

''(iii) districts of the Nation; and

''(iv) allottees; and

''(B) with respect to any entitlement to those resources for which a fee owner of allotted land has received a final determination under applicable law.

''(2) JURISDICTION.—Subject to a requirement of exhaustion of any administrative or other remedies prescribed under the laws of the Nation, jurisdiction over any disputes relating to the matters described in paragraph (1) shall be vested in the courts of the Nation.

''(3) APPLICABLE LAW.—The regulatory and remedial procedures referred to in paragraphs (1) and (2) shall be subject to all applicable law.

''(j) FEDERAL JURISDICTION.—The Federal Courts shall have concurrent jurisdiction over actions described in subsection 312(h) to the extent otherwise provided in Federal law.

"SEC. 313. AFTER-ACQUIRED TRUST LAND.

''(a) IN GENERAL.—Except as provided in subsection (b)—

''(1) the Nation may seek to have taken into trust by the United States, for the benefit of the Nation, legal title to additional land within the State and outside the exterior boundaries of the Nation's Reservation only in accordance with an Act of Congress specifically authorizing the transfer for the benefit of the Nation;

''(2) lands taken into trust under paragraph (1) shall include only such water rights and water use privileges as are consistent with State water law and State water management policy; and

''(3) after-acquired trust land shall not include Federal reserved rights to surface water or groundwater.

''(b) EXCEPTION.—Subsection (a) shall not apply to land acquired by the Nation under the Gila Bend Indian Reservation Lands Replacement Act (100 Stat. 1798).

"SEC. 314. NONREIMBURSABLE COSTS.

''(a) CENTRAL ARIZONA WATER CONSERVATION DISTRICT.—For the purpose of determining the allocation and repayment of costs of any stage of the Central Arizona Project, the costs associated with the delivery of Central Arizona Project water acquired under sections 304(a) and 306(a), whether that water is delivered for use by the Nation or in accordance with any assignment, exchange, lease, option to lease, or other agreement for the temporary disposition of water entered into by the Nation—

''(1) shall be nonreimbursable; and

''(2) shall be excluded from the repayment obligation of the Central Arizona Water Conservation District.

''(b) CLAIMS BY UNITED STATES.—The United States shall—

''(1) make no claim against the Nation or any allottee for reimbursement or repayment of any cost associated with—

''(A) the construction of facilities under the Colorado River Basin Project Act (43 U.S.C. 1501 et seq.);

''(B) the delivery of Central Arizona Project water for any use authorized under this title; or

''(C) the implementation of this title;

''(2) make no claim against the Nation for reimbursement or repayment of the costs associated with the construction of facilities described in paragraph (1)(A) for the benefit of and use on land that—

''(A) is known as the 'San Lucy Farm'; and

''(B) was acquired by the Nation under the Gila Bend Indian Reservation Lands Replacement Act (100 Stat. 1798); and

''(3) impose no assessment with respect to the costs referred to in paragraphs (1) and (2) against—

''(A) trust or allotted land within the Nation's Reservation; or

''(B) the land described in paragraph (2).

"SEC. 315. TRUST FUND.

''(a) REAUTHORIZATION.—Congress reauthorizes the trust fund established by section 309 of the 1982 Act, containing an initial deposit of $15,000,000 made under that section, for use in carrying out this title.

''(b) EXPENDITURE AND INVESTMENT.—Subject to the limitations of subsection (d), the principal and all accrued interest and dividends in the trust fund established under section 309 of the 1982 Act may be—

''(1) expended by the Nation for any governmental purpose; and

''(2) invested by the Nation in accordance with such policies as the Nation may adopt.

''(c) RESPONSIBILITY OF SECRETARY.—The Secretary shall not—

''(1) be responsible for the review, approval, or audit of the use and expenditure of any funds from the trust fund reauthorized by subsection (a); or

''(2) be subject to liability for any claim or cause of action arising from the use or expenditure by the Nation of those funds.

''(d) CONDITIONS OF TRUST.—

''(1) RESERVE FOR THE COST OF SUBJUGATION.—The Nation shall reserve in the trust fund reauthorized by subsection (a)—

''(A) the principal amount of at least $3,000,000; and

''(B) interest on that amount that accrues during the period beginning on the enforceability date and ending on the earlier of—

''(i) the date on which full payment of such costs has been made; or

''(ii) the date that is 10 years after the enforceability date.

''(2) PAYMENT.—The costs described in paragraph (1) shall be paid in the amount, on the terms, and for the purposes prescribed in section 307(a)(1)(F).

''(3) LIMITATION ON RESTRICTIONS.—On the occurrence of an event described in clause (i) or (ii) of paragraph (1)(B)—

''(A) the restrictions imposed on funds from the trust fund described in paragraph (1) shall terminate; and

''(B) any of those funds remaining that were reserved under paragraph (1) may be used by the Nation under subsection (b)(1).

''SEC. 316. MISCELLANEOUS PROVISIONS.

''(a) IN GENERAL.—Nothing in this title—

''(1) establishes the applicability or inapplicability to groundwater of any doctrine of Federal reserved rights;

''(2) limits the ability of the Nation to enter into any agreement with the Arizona Water Banking Authority (or a successor agency) in accordance with State law;

''(3) prohibits the Nation, any individual member of the Nation, an allottee, or a fee owner of allotted land in the San Xavier Reservation from lawfully acquiring water rights for use in the Tucson management area in addition to the water rights granted or confirmed under this title and the Tohono O'odham settlement agreement;

''(4) abrogates any rights or remedies existing under section 1346 or 1491 of title 28, United States Code;

''(5) affects the obligations of the parties under the Agreement of December 11, 1980, with respect to the 8,000 acre feet of Central Arizona Project water contracted by the Nation for the Sif Oidak District;

''(6)(A) applies to any exempt well;

''(B) prohibits or limits the drilling of any exempt well within—

''(i) the San Xavier Reservation; or

''(ii) the eastern Schuk Toak District; or

''(C) subjects water from any exempt well to any pumping limitation under this title; or

''(7) diminishes or abrogates rights to use water under—

''(A) contracts of the Nation in existence before the enforceability date; or

''(B) the well site agreement referred to in the Asarco agreement and any well site agreement entered into under the Asarco agreement.

''(b) NO EFFECT ON FUTURE ALLOCATIONS.—Water received under a lease or exchange of Central Arizona Project water under this title does not affect any future allocation or reallocation of Central Arizona Project water by the Secretary.

''(c) LIMITATION ON LIABILITY OF UNITED STATES.—

''(1) IN GENERAL.—The United States shall have no trust or other obligation—

''(A) to monitor, administer, or account for, in any manner, any of the funds paid to the Nation or the San Xavier District under this Act; or

''(B) to review or approve the expenditure of those funds.

''(2) INDEMNIFICATION.—The Nation shall indemnify the United States, and hold the United States harmless, with respect to any and all claims (including claims for takings or breach of trust) arising out of the receipt or expenditure of funds described in paragraph (1)(A).

''SEC. 317. AUTHORIZED COSTS.

''(a) IN GENERAL.—There are authorized to be appropriated—

''(1) to construct features of irrigation systems described in paragraphs (1) through (4) of section 304(c) that are not authorized to be constructed under any other provision of law, an amount equal to the sum of—

''(A) $3,500,000; and

''(B) such additional amount as the Secretary determines to be necessary to adjust the amount under subparagraph (A) to account for ordinary fluctuations in the costs of construction of irrigation features for the period beginning on October 12, 1982, and ending on the date on which the construction of the features described in this subparagraph is initiated, as indicated by engineering cost indices applicable to the type of construction involved;

''(2) $18,300,000 in lieu of construction to implement section 304(c)(3)(B), including an adjustment representing interest that would have been earned if this amount had been deposited in the cooperative fund during the period beginning on January 1, 2008, and ending on the date the amount is actually paid to the San Xavier District;

''(3) $891,200 to develop and initiate a water management plan for the San Xavier Reservation under section 308(d);

''(4) $237,200 to develop and initiate a water management plan for the eastern Schuk Toak District under section 308(d);

''(5) $4,000,000 to complete the water resources study under section 311(d);

''(6) $215,000 to develop and initiate a groundwater monitoring program for the San Xavier Reservation under section 311(c)(1);

''(7) $175,000 to develop and implement a groundwater monitoring program for the eastern Schuk Toak District under section 311(c)(2);

''(8) $250,000 to complete the Asarco land exchange study under section 311(f); and

''(9) such additional sums as are necessary to carry out the provisions of this title other than the provisions referred to in paragraphs (1) through (8).

''(b) TREATMENT OF APPROPRIATED AMOUNTS.—Amounts made available under subsection (a) shall be considered to be authorized costs for purposes of section 403(f)(2)(D)(iii) of the Colorado River Basin Project Act (43 U.S.C. 1543(f)(2)(D)(iii)) (as amended by section 107(a) of the Arizona Water Settlements Act).''.

SEC. 302. SOUTHERN ARIZONA WATER RIGHTS SETTLEMENT EFFECTIVE DATE.

(a) DEFINITIONS.—The definitions under section 301 of the Southern Arizona Water Rights Settlement Amendments Act of 2004 (as contained in the amendment made by section 301) shall apply to this title.

(b) EFFECTIVE DATE.—This title and the amendments made by this title take effect as of the enforceability date, which is the date the Secretary publishes in the Federal Register a statement of findings that—

(1)(A) to the extent that the Tohono O'odham settlement agreement conflicts with this title or an amendment made by this title, the Tohono O'odham settlement agreement has been revised through an amendment to eliminate those conflicts; and

(B) the Tohono O'odham settlement agreement, as so revised, has been executed by the parties and the Secretary;

(2) the Secretary and other parties to the agreements described in section 309(h)(2) of the Southern Arizona Water Rights Settlement Amendments Act of 2004 (as contained in the amendment made by section 301) have executed those agreements;

(3) the Secretary has approved the interim allottee water rights code described in section 308(b)(3)(A) of the Southern Arizona Water Rights Settlement Amendments Act of 2004 (as contained in the amendment made by section 301);

(4) final dismissal with prejudice has been entered in each of the Alvarez case and the Tucson case on the sole condition that the Secretary publishes the findings specified in this section;

(5) the judgment and decree attached to the Tohono O'odham settlement agreement as exhibit 17.1 has been approved by the State court having jurisdiction over the Gila River adjudication proceedings, and that judgment and decree have become final and nonappealable;

(6) implementation costs have been identified and retained in the Lower Colorado River Basin Development Fund, specifically—

(A) $18,300,000 to implement section 304(c)(3);

(B) $891,200 to implement a water management plan for the San Xavier Reservation under section 308(d) of the Southern Arizona Water Rights Settlement Amendments Act of 2004 (as contained in the amendment made by section 301);

(C) $237,200 to implement a water management plan for the eastern Schuk Toak District under section 308(d) of the Southern Arizona Water Rights Settlement Amendments Act of 2004 (as contained in the amendment made by section 301);

(D) $4,000,000 to complete the water resources study under section 311(d) of the Southern Arizona Water Rights Settlement Amendments Act of 2004 (as contained in the amendment made by section 301);

(E) $215,000 to develop and implement a groundwater monitoring program for the San Xavier Reservation under section 311(c)(1) of the Southern Arizona Water Rights Settlement Amendments Act of 2004 (as contained in the amendment made by section 301);

(F) $175,000 to develop and implement a groundwater monitoring program for the eastern Schuk Toak District under section 311(c)(2) of the Southern Arizona Water Rights Settlement Amendments Act of 2004 (as contained in the amendment made by section 301); and

(G) $250,000 to complete the Asarco land exchange study under section 311(f) of the Southern Arizona Water Rights Settlement Amendments Act of 2004 (as contained in the amendment made by section 301);

(7) the State has enacted legislation that—

(A) qualifies the Nation to earn long-term storage credits under the Asarco agreement;

(B) implements the San Xavier groundwater protection program in accordance with paragraph 8.8 of the Tohono O'odham settlement agreement;

(C) enables the State to carry out section 306(b); and

(D) confirms the jurisdiction of the State court having jurisdiction over Gila River adjudication proceedings and decrees to carry out the provisions of sections 312(d) and 312(h) of the Southern Arizona Water Rights Settlement Amendments Act of 2004 (as contained in the amendment made by section 301);

(8) the Secretary and the State have agreed to an acceptable firming schedule referred to in section 105(b)(2)(C); and

(9) a final judgment has been entered in Central Arizona Water Conservation District v. United States (No. CIV 95–625–TUC–WDB(EHC), No. CIV 95–1720–PHX–EHC) (Consolidated Action) in accordance with the repayment stipulation as provided in section 207.

(c) FAILURE TO PUBLISH STATEMENT OF FINDINGS.—If the Secretary does not publish a statement of findings under subsection (a) by December 31, 2007—

(1) the 1982 Act shall remain in full force and effect;

(2) this title shall not take effect; and

(3) any funds made available by the State under this title that are not expended, together with any interest on those funds, shall immediately revert to the State.

TITLE IV—SAN CARLOS APACHE TRIBE WATER RIGHTS SETTLEMENT

SEC. 401. EFFECT OF TITLES I, II, AND III.

None of the provisions of title I, II, or III shall be construed to amend, alter, or limit the authority of—

(1) the United States to assert any claim against any party, including any claim for water rights, injury to water rights, or injury to

water quality in its capacity as trustee for the San Carlos Apache Tribe, its members and allottees, or in any other capacity on behalf of the San Carlos Apache Tribe, its members, and allottees, in any judicial, administrative, or legislative proceeding; or

(2) the San Carlos Apache Tribe to assert any claim against any party, including any claim for water rights, injury to water rights, or injury to water quality in its own behalf or on behalf of its members and allottees in any judicial, administrative, or legislative proceeding consistent with title XXXVII of Public Law 102–575 (106 Stat. 4600, 4740).

SEC. 402. ANNUAL REPORT.

(a) IN GENERAL.—Not later than 1 year after the date of enactment of this Act and annually thereafter, the Secretary shall submit to the Committee on Energy and Natural Resources of the Senate and the Committee on Resources of the House of Representatives a report that describes the status of efforts to reach a negotiated agreement covering the Gila River water rights claims of the San Carlos Apache Tribe.

(b) TERMINATION.—This section shall be of no effect after the later of—

(1) the date that is 3 years after the date of enactment of this Act; or

(2) the date on which the Secretary submits a third annual report under this section.

The amendment (No. 3730) was agreed to.

(The text of the amendment is printed in today's RECORD under ''Text of Amendments.'')

The committee amendment in the nature of a substitute, as amended, was agreed to.

The bill (S. 437), as amended, was read the third time and passed.

(The bill will be printed in a future edition of the RECORD.)

UPPER WHITE SALMON WILD AND SCENIC RIVERS ACT

The Senate proceeded to consider the bill (S. 1614) to designate a portion of White Salmon River as a component of the National Wild and Scenic Rivers System, which had been reported from the Committee on Energy and Natural Resources, with an amendment to strike all after the enacting clause and insert in lieu thereof the following:

(Strike the part shown in black brackets and insert the part shown in italic.)

S. 1614

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 ''Upper White Salmon Wild and Scenic Rivers Act''.

[SEC. 2. FINDINGS.

[The Congress finds the following:

[(1) The Columbia River Gorge National Scenic Area Act (16 U.S.C. 544 et seq.) directed the Secretary of Agriculture to study the Upper White Salmon River for possible designation as a component of the National Wild and Scenic Rivers System.

[(2) The study, conducted by the Forest Service, included extensive public involvement by a broadly inclusive task force.

[(3) The study determined that the Upper White Salmon River and its tributary, Cascade Creek, are eligible for inclusion in the National Wild and Scenic Rivers System based on their free-flowing condition and outstandingly remarkable scenic, hydrologic, geologic, and wildlife values.

[SEC. 3. UPPER WHITE SALMON WILD AND SCENIC RIVER.

[Section 3(a) of the Wild and Scenic Rivers Act (16 U.S.C. 1274(a)) is amended by adding the following new paragraph at the end:

[''( ) WHITE SALMON RIVER, WASHINGTON.—

[''(A) DESIGNATION.—Segments of the main stem and Cascade Creek, totaling 20 miles, to be administered by the Secretary of Agriculture as follows:

[''(i) 1.6-MILE SEGMENT.—The 1.6-mile segment of the main stem of the White Salmon River from the headwaters on Mount Adams in Sec. 17, T. 8 N., R. 10 E., downstream to the Mount Adams wilderness boundary shall be administered as a wild river.

[''(ii) 5.1-MILE SEGMENT.—The 5.1-mile segment of Cascade Creek from its headwaters on Mount Adams in Sec. 10, T. 8 N., R. 10 E. downstream to the Mount Adams Wilderness boundary shall be administered as a wild river.

[''(iii) 1.5-MILE SEGMENT.—The 1.5-mile segment of Cascade Creek from the Mount Adams Wilderness boundary downstream to its confluence with the White Salmon River shall be administered as a scenic river.

[''(iv) 11.8-MILE SEGMENT.—The 11.8-mile segment of the main stem of the White Salmon River from the Mount Adams Wilderness boundary downstream to the Gifford Pinchot National Forest boundary shall be administered as a scenic river.''.

[SEC. 4. ADDITIONAL SECTIONS.

[Nothing in this Act, or any amendment made by this Act, shall limit the suitability of the 18.4-mile segment from the Gifford Pinchot National Forest boundary to the confluence with Gilmer Creek for designation as a wild and scenic river under section 3(a) of the Wild and Scenic Rivers Act (16 U.S.C. 1274(a)).

[SEC. 5. MANAGEMENT.

[The Secretary of Agriculture shall develop and administer the comprehensive management plan required by section 3(d)(1) of the Wild and Scenic Rivers Act (16 U.S.C. 1274(d)(1)) for the designated sections of the Upper White Salmon River in general accordance with that portion of the preferred alternative of the Forest Service Wild and Scenic River Study Report and Final Legislative Environmental Impact Statement for the Upper White Salmon River dated July 7, 1997, addressing only the designated sections.

[SEC. 6. AUTHORIZATION OF APPROPRIATIONS.

[There are authorized to be appropriated such sums as may be necessary to carry out this Act.]

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Upper White Salmon Wild and Scenic Rivers Act''.

SEC. 2. UPPER WHITE SALMON WILD AND SCENIC RIVER.

Section 3(a) of the Wild and Scenic Rivers Act (16 U.S.C. 1274(a)) is amended by adding at the end the following:

''( ) WHITE SALMON RIVER, WASHINGTON.—The 20 miles of river segments of the main stem of the White Salmon River and Cascade Creek, Washington, to be administered by the Secretary of Agriculture in the following classifications:

''(A) The approximately 1.6-mile segment of the main stem of the White Salmon River from the headwaters on Mount Adams in section 17, township 8 north, range 10 east, downstream to the Mount Adams wilderness boundary as a wild river.

''(B) The approximately 5.1-mile segment of Cascade Creek from its headwaters on Mount Adams in section 10, township 8 north, range 10 east, downstream to the Mount Adams Wilderness boundary as a wild river.

''(C) The approximately 1.5-mile segment of Cascade Creek from the Mount Adams Wilderness boundary downstream to its confluence with the White Salmon River as a scenic river.

''(D) The approximately 11.8-mile segment of the main stem of the White Salmon River from the Mount Adams Wilderness boundary downstream to the Gifford Pinchot National Forest boundary as a scenic river.''.

SEC. 3. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as are necessary to carry out this Act.

The committee amendment in the nature of a substitute was agreed to. The bill (S. 1614), as amended, was read the third time and passed.

UINTAH RESEARCH AND CURATORIAL CENTER ACT

The Senate proceeded to consider the bill (S. 1678) to establish a program and criteria for National Heritage Areas in the United States, and for other purposes, which had been reported from the Committee on Energy and Natural Resources, with an amendment to strike all after the enacting clause and insert in lieu thereof the following:

(Strike the part shown in black brackets and insert the part shown in italic.)

S. 1678

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 ''Uintah Research and Curatorial Center Act''.

[SEC. 2. DEFINITIONS.

[In this Act:

[(1) CENTER.—The term ''Center'' means the Uintah Research and Curatorial Center.

[(2) MAP.—The term ''map'' means the map entitled ''Proposed Location of the Uintah Research and Curatorial Center'', numbered 122/80074, IMDE, and dated March 31, 2003.

[(3) MONUMENT.—The term ''Monument'' means the Dinosaur National Monument in the States of Colorado and Utah.

[(4) SECRETARY.—The term ''Secretary'' means the Secretary of the Interior.

[SEC. 3. UINTAH RESEARCH AND CURATORIAL CENTER.

[(a) IN GENERAL.—To provide for the unified and cost-effective curation of the paleontological, natural, and cultural objects of the Monument and the surrounding area, the Secretary shall establish the Uintah Research and Curatorial Center on land located outside the boundary of the Monument acquired under subsection (b).

[(b) ACQUISITION OF LAND.—The Secretary may acquire by donation land for the Center consisting of not more than 5 acres located in Uintah County, in the vicinity of Vernal, Utah, as generally depicted on the map.

[(c) AVAILABILITY OF MAP.—The map shall be on file and available for public inspection in the appropriate offices of the National Park Service.

[(d) USE.—The Center shall be used for the curation of, storage of, and research on items in—

[(1) the museum collection of the Monument; and

[(2) any collection maintained by an entity described in subsection (e)(2) that enters into a cooperative agreement with the Secretary.

[(e) ADMINISTRATION.—

[(1) IN GENERAL.—The Secretary shall—

[(A) administer the land acquired under subsection (b); and

[(B) promulgate any regulations that the Secretary determines to be appropriate for the use and management of the land.

[(2) COOPERATIVE AGREEMENTS.—The Secretary may enter into a cooperative agreement with a Federal, State, and local agency, academic institution, Indian tribe, or nonprofit entity to provide for—

[(A) the curation of and research on the museum collection at the Center; and

[(B) the development, use, management, and operation of the Center.

[(3) LIMITATION.—The land acquired by the Secretary under subsection (b) shall not—

[(A) be a part of the Monument; or

[(B) be subject to the laws (including regulations) applicable to the Monument.

[SEC. 4. AUTHORIZATION OF APPROPRIATIONS.

[There are authorized to be appropriated such sums as are necessary to carry out this Act.]

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Uinta Research and Curatorial Center Act''.

SEC. 2. DEFINITIONS.

In this Act:

(1) CENTER.—The term ''Center'' means the Uinta Research and Curatorial Center.

(2) MAP.—The term ''map'' means the map entitled ''Proposed Location of the Uinta Research and Curatorial Center'', numbered 122/80,080, and dated May 2004.

(3) MONUMENT.—The term ''Monument'' means the Dinosaur National Monument in the States of Colorado and Utah.

(4) SECRETARY.—The term ''Secretary'' means the Secretary of the Interior.

SEC. 3. UINTA RESEARCH AND CURATORIAL CENTER.

(a) IN GENERAL.—To provide for the unified and cost-effective curation of the paleontological, natural, and cultural objects of the Monument and the surrounding area, the Secretary shall establish the Uinta Research and Curatorial Center on land located outside the boundary of the Monument acquired under subsection (b).

(b) ACQUISITION OF LAND.—The Secretary may acquire by donation land for the Center consisting of not more than 5 acres located in Uintah County, in the vicinity of Vernal, Utah, as generally depicted on the map.

(c) AVAILABILITY OF MAP.—The map shall be on file and available for public inspection in the appropriate offices of the National Park Service.

(d) USE.—The Center shall be used for the curation of, storage of, and research on items in—

(1) the museum collection of the Monument; and

(2) any collection maintained by an entity described in subsection (e)(2) that enters into a cooperative agreement with the Secretary.

(e) ADMINISTRATION.—

(1) IN GENERAL.—The Secretary shall—

(A) administer the land acquired under subsection (b); and

(B) promulgate any regulations that the Secretary determines to be appropriate for the use and management of the land.

(2) COOPERATIVE AGREEMENTS.—The Secretary may enter into a cooperative agreement with a Federal, State, and local agency, academic institution, Indian tribe, or nonprofit entity to provide for—

(A) the curation of and research on the museum collection at the Center; and

(B) the development, use, management, and operation of the Center.

(3) LIMITATION.—The land acquired by the Secretary under subsection (b) shall not—

(A) be a part of the Monument; or

(B) be subject to the laws (including regulations) applicable to the Monument.

SEC. 4. AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated to carry out this Act $8,800,000.

Amend the title so as to read: ''A bill to provide for the establishment of the Uinta Research and Curatorial Center for Dinosaur National Monument in the States of Colorado and Utah, and for other purposes.''.

The committee amendment in the nature of a substitute was agreed to.

The bill (S. 1678), as amended, was read the third time and passed.

REHABILITATION OF THE BENJAMIN FRANKLIN MEMORIAL IN PHILADELPHIA

The Senate proceeded to consider the bill (S. 1852) to provide financial assistance for the rehabilitation of the Benjamin Franklin National Memorial in Philadelphia, Pennsylvania, the development of an exhibit to commemorate the 300th anniversary of the birth of Benjamin Franklin, which had been reported from the Committee on Energy and Natural Resources, with an amendment to strike all after the enacting clause and insert in lieu thereof the following:

(Strike the part shown in black brackets and insert the part shown in italic.)

S. 1852

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

[SECTION 1. BENJAMIN FRANKLIN NATIONAL MEMORIAL.

[(a) FINDINGS.—Congress finds that—

[(1) in Public Law 92–551 (86 Stat. 1164), Congress—

[(A) designated the Benjamin Franklin Memorial Hall as the Benjamin Franklin National Memorial; and

[(B) directed the Secretary of the Interior to enter into a cooperative agreement with the Franklin Institute; and

[(2) in a memorandum of understanding entered into on November 6, 1973, the Secretary of the Interior agreed to cooperate in the preservation and presentation of the Benjamin Franklin Memorial Hall as a national memorial.

[(b) IN GENERAL.—The Secretary of the Interior shall provide a grant to the Franklin Institute to—

[(1) rehabilitate the Benjamin Franklin National Memorial (including the Franklin statue) in Philadelphia, Pennsylvania; and

[(2) develop an exhibit featuring artifacts and multimedia collections relating to Benjamin Franklin, to be displayed at a museum adjacent to the Benjamin Franklin National Memorial.

[(c) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this Act for fiscal years 2004 through 2008 $10,000,000.]

SECTION 1. BENJAMIN FRANKLIN NATIONAL MEMORIAL.

The Secretary of the Interior may provide a grant to the Franklin Institute to—

(1) rehabilitate the Benjamin Franklin National Memorial (including the Franklin statue) in Philadelphia, Pennsylvania; and

(2) develop an interpretive exhibit relating to Benjamin Franklin, to be displayed at a museum adjacent to the Benjamin Franklin National Memorial.

SEC. 2. AUTHORIZATION OF APPROPRIATIONS.

(a) IN GENERAL.—There is authorized to be appropriated to carry out this Act $10,000,000.

(b) REQUIRED MATCH.—The Secretary of the Interior shall require the Franklin Institute to match any amounts provided to the Franklin Institute under this Act.

The committee amendment in the nature of a substitute was agreed to.

The bill (S. 1852), as amended, was read the third time and passed.

NEW JERSEY COASTAL HERITAGE TRAIL ROUTE

The bill (S. 2142) to authorize appropriations for the New Jersey Coastal Heritage Trail Route, and for other purposes, was considered, read the third time, and passed; as follows:

S. 2142

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

SECTION 1. NEW JERSEY COASTAL HERITAGE TRAIL ROUTE.

(a) AUTHORIZATION OF APPROPRIATIONS.—Section 6 of Public Law 100–515 (16 U.S.C. 1244 note) is amended—

(1) in subsection (b)(1), by striking ''$4,000,000'' and inserting ''$8,000,000''; and

(2) in subsection (c), by striking ''10'' and inserting ''15''.

(b) GRANTS.—Public Law 100–515 (16 U.S.C. 1244 note) is amended—

(1) in section 4, by inserting ''and, subject to the availability of appropriations, grants for,'' after ''technical assistance in''; and

(2) in section 6(b)(2) by inserting ''and grants'' after ''technical assistance''.

(c) STRATEGIC PLAN.—Public Law 100–515 (16 U.S.C. 1244 note) is amended by adding at the end the following:

''SEC. 8. STRATEGIC PLAN.

''(a) IN GENERAL.—Not later than 4 years after the date of the enactment of this section, the Secretary shall prepare a strategic plan for the route.

''(b) CONTENTS.—The strategic plan prepared under subsection (a) shall describe—

''(1) opportunities to increase participation by national and local private and public interests in the planning, development, and administration of the route; and

''(2) organizational options for sustaining the route.''.

ROCKY MOUNTAIN NATIONAL PARK BOUNDARY ADJUSTMENT OF ACT OF 2004

The Senate proceeded to consider the bill (S. 2181) to adjust the boundary of Rocky Mountain National Park in the State of Colorado, which had been reported from the Committee on Energy and Natural Resources with an amendment, as follows:

(Strike the parts shown in black brackets and insert the parts shown in italic.)

S. 2181

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 ''Rocky Mountain National Park Boundary Adjustment Act of 2004''.

SEC. 2. DEFINITIONS.

In this Act:

(1) FEDERAL PARCEL.—The term ''Federal parcel'' means the parcel of approximately 70 acres of Federal land near MacGregor Ranch, Larimer County, Colorado, as depicted on the map.

(2) MAP.—The term ''map'' means the map numbered [121/60,467, dated September 12, 2003] *121/80,154, dated June 2004*.

(3) NON-FEDERAL PARCELS.—The term ''non-Federal parcels'' means the 3 parcels of non-Federal land comprising approximately 5.9 acres that are located near MacGregor Ranch, Larimer County, Colorado, as depicted on the map.

(4) PARK.—The term ''Park'' means Rocky Mountain National Park in the State of Colorado.

SEC. 3. ROCKY MOUNTAIN NATIONAL PARK BOUNDARY ADJUSTMENT.

(a) EXCHANGE OF LAND.—

(1) IN GENERAL.—The Secretary shall accept an offer to convey all right, title, and interest in and to the non-Federal parcels to the United States in exchange for the Federal parcel.

(2) CONVEYANCE.—Not later than 60 days after the date on which the Secretary receives an offer under paragraph (1), the Secretary shall convey the Federal parcel in exchange for the non-Federal parcels.

(3) CONSERVATION EASEMENT.—As a condition of the exchange of land under paragraph (2), the Secretary shall reserve a perpetual easement to the Federal parcel for the purposes of protecting, preserving, and enhancing the conservation values of the Federal parcel.

(b) BOUNDARY ADJUSTMENT; MANAGEMENT OF LAND.—On acquisition of the non-Federal parcels under subsection (a)(2), the Secretary shall—

(1) adjust the boundary of the Park to reflect the acquisition of the non-Federal parcels; and

(2) manage the non-Federal parcels as part of the Park, in accordance with any laws (including regulations) applicable to the Park.

The committee amendment was agreed to.

The bill (S. 2181), as amended, was read the third time and passed, as follows:

(The bill will be printed in a future edition of the RECORD.)

CARIBBEAN NATIONAL FOREST ACT OF 2004

The bill (S. 2334) to designate certain National Forest System land in the Commonwealth of Puerto Rico as components of the National Wilderness Preservation System, was considered, read the third time, and passed; as follows:

S. 2334

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 ''Caribbean National Forest Act of 2004''.

SEC. 2. DEFINITIONS.

In this Act:

(1) MAP.—The term ''map'' means the map dated April 13, 2004 and entitled ''El Toro Proposed Wilderness Area''.

(2) SECRETARY.—The term ''Secretary'' means the Secretary of Agriculture.

SEC. 3. WILDERNESS DESIGNATION, CARIBBEAN NATIONAL FOREST, PUERTO RICO.

(a) EL TORO WILDERNESS.—

(1) IN GENERAL.—In furtherance of the purposes of the Wilderness Act (16 U.S.C. 1113 et seq.), the approximately 10,000 acres of land in the Caribbean National Forest/Luquillo Experimental Forest in the Commonwealth of Puerto Rico described in the map are designated as wilderness and as a component of the National Wilderness Preservation System.

(2) DESIGNATION.—The land designated in paragraph (1) shall be known as the El Toro Wilderness.

(3) WILDERNESS BOUNDARIES.—The El Toro Wilderness shall consist of the land described in the map.

(b) MAP AND BOUNDARY DESCRIPTION.—

(1) IN GENERAL.—As soon as practicable after the date of enactment of this Act, the Secretary shall—

(A) prepare a boundary description of the El Toro Wilderness; and

(B) submit the map and the boundary description to the Committee on Energy and Natural Resources of the Senate and the Committee on Resources of the House of Representatives.

(2) PUBLIC INSPECTION AND TREATMENT.—The map and the boundary description prepared under paragraph (1)(A)—

(A) shall be on file and available for public inspection in the office of the Chief of the Forest Service; and

(B) shall have the same force and effect as if included in this Act.

(3) ERRORS.—The Secretary may correct clerical and typographical errors in the map and the boundary description prepared under paragraph (1)(A).

(c) ADMINISTRATION.—

(1) IN GENERAL.—Subject to valid existing rights, the Secretary shall administer the El Toro Wilderness in accordance with the Wilderness Act (16 U.S.C. 1131 et seq.) and this Act.

(2) EFFECTIVE DATE OF WILDERNESS ACT.—With respect to the El Toro Wilderness, any reference in the Wilderness Act (16 U.S.C. 1131 et seq.) to the effective date of that Act shall be deemed to be a reference to the date of the enactment of this Act.

(d) SPECIAL MANAGEMENT CONSIDERATIONS.—Consistent with the Wilderness Act (16 U.S.C. 1131 et seq.), nothing in this Act precludes the installation and maintenance of hydrologic, meteorological, climatological, or atmospheric data collection and remote transmission facilities, or any combination of those facilities, in any case in which the Secretary determines that the facilities are essential to the scientific research purposes of the Luquillo Experimental Forest.

MONTANA NATIONAL FORESTS BOUNDARY ADJUSTMENT ACT OF 2004

The Senate proceeded to consider the bill (S. 2408) to adjust the boundaries of the Helena, Lolo, and Beaverhead-Deerlodge National Forests in the State of Montana, which had been reported from the Committee on Energy and Natural Resources, with an amendment to strike all after enacting clause and insert in lieu thereof the following:

(Strike the part shown in black brackets and insert the part shown in italic.)

S. 2408

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 ''Montana National Forests Boundary Adjustment Act of 2004''.

[SEC. 2. DEFINITIONS.

[In this Act:

[(1) FOREST.—The term ''Forest'' means the Helena National Forest, Lolo National Forest, and Beaverhead-Deerlodge National Forest in the State of Montana.

[(2) MAP.—The term ''map'' means—

[(A) the map entitled ''Blackfoot Community Project Acquisition Proposed Adjustments, Helena National Forest Boundary'' and dated March 11, 2004;

[(B) the map entitled ''Blackfoot Community Project Acquisition Region One, Lolo National Forest Boundary'' and dated March 11, 2004; and

[(C) the map entitled ''Blackfoot Community Project Acquisition Proposed Adjustments, Beaverhead-Deerlodge National Forest Boundary Adjustment'' and dated March 11, 2004.

[(3) SECRETARY.—The term ''Secretary'' means the Secretary of Agriculture.

[SEC. 3. HELENA, LOLO, AND BEAVERHEAD-DEERLODGE NATIONAL FORESTS BOUNDARY ADJUSTMENT.

[(a) IN GENERAL.—The boundaries of the Forests are modified as depicted on the maps.

[(b) MAPS.—

[(1) AVAILABILITY.—The maps shall be on file and available for public inspection in—

[(A) the Office of the Chief of the Forest Service; and

[(B) the office of the Regional Forester, Missoula, Montana.

[(2) CORRECTION AUTHORITY.—The Secretary may make technical corrections to the maps.

[(c) ADMINISTRATION.—Any land or interest in land acquired within the boundaries of the Forests for National Forest System purposes shall be managed in accordance with—

[(1) the Act of March 1, 1911 (commonly known as the ''Weeks Law'') (16 U.S.C. 480 et seq.); and

[(2) the laws (including regulations) applicable to the National Forest System.

[(d) LAND AND WATER CONSERVATION FUND.—For purposes of section 7 of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 4601–9), the boundaries of the Forests, as adjusted under subsection (a), shall be considered to be the boundaries of the Forests as of January 1, 1965.

[(e) EFFECT.—Nothing in this Act limits the authority of the Secretary to adjust the boundaries of the Forests under section 11 of the Act of March 1, 1911 (16 U.S.C. 521).]

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Montana National Forests Boundary Adjustment Act of 2004''.

SEC. 2. DEFINITIONS.

In this Act:

(1) FORESTS.—The term ''Forests'' means the Helena National Forest, Lolo National Forest, and Beaverhead-Deerlodge National Forest in the State of Montana.

(2) MAP.—The term ''map'' means—

(A) the map entitled ''Helena National Forest Boundary Adjustment Northern Region, USDA Forest Service'' and dated September 13, 2004;

(B) the map entitled ''Lolo National Forest Boundary Adjustment Northern Region, USDA Forest Service'' and dated September 13, 2004; and

(C) the map entitled ''Deerlodge National Forest Boundary Adjustment Northern Region USDA Forest Service'' and dated September 13, 2004.

(3) SECRETARY.—The term ''Secretary'' means the Secretary of Agriculture.

SEC. 3. HELENA, LOLO, AND BEAVERHEAD-DEERLODGE NATIONAL FORESTS BOUNDARY ADJUSTMENT.

(a) IN GENERAL.—The boundaries of the Forests are modified as depicted on the maps.

(b) MAPS.—

(1) AVAILABILITY.—The maps shall be on file and available for public inspection in—

(A) the Office of the Chief of the Forest Service; and

(B) the office of the Regional Forester, Missoula, Montana.

(2) CORRECTION AUTHORITY.—The Secretary may make technical corrections to the maps.

(c) ADMINISTRATION.—Any land or interest in land acquired within the boundaries of the Forests for National Forest System purposes shall be managed in accordance with—

(1) the Act of March 1, 1911 (commonly known as the ''Weeks Law'') (16 U.S.C. 480 et seq.); and

(2) the laws (including regulations) applicable to the National Forest System.

(d) LAND AND WATER CONSERVATION FUND.—For purposes of section 7 of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 460l–9), the boundaries of the Forests, as adjusted under subsection (a), shall be considered to be the boundaries of the Forests as of January 1, 1965.

(e) EFFECT.—Nothing in this Act limits the authority of the Secretary to adjust the boundaries of the Forests under section 11 of the Act of March 1, 1911 (16 U.S.C. 521).

The committee amendment in the nature of a substitute was agreed to.

The bill (S. 2408), as amended, was read the third time and passed.

REDWOOD NATIONAL PARK BOUNDARY ADJUSTMENT ACT OF 2004

The bill (S. 2567) to adjust the boundary of Redwood National Park in the State of California, was considered, read the third time, and passed; as follows:

S. 2567

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 ''Redwood National Park Boundary Adjustment Act of 2004''.

SEC. 2. REDWOOD NATIONAL PARK BOUNDARY ADJUSTMENT.

Section 2(a) of the Act of Public Law 90–545 (16 U.S.C. 79b(a)) is amended—

(1) in the first sentence, by striking ''(a) The area'' and all that follows through the period at the end and inserting the following: ''(a)(1) The Redwood National Park consists of the land generally depicted on the map entitled 'Redwood National Park, Revised Boundary', numbered 167/60502, and dated February, 2003.'';

(2) by inserting after paragraph (1) (as designated by paragraph (1)) the following:

''(2) The map referred to in paragraph (1) shall be—

''(A) on file and available for public inspection in the appropriate offices of the National Park Service; and

''(B) provided by the Secretary of the Interior to the appropriate officers of Del Norte and Humboldt Counties, California.''; and

(3) in the second sentence—

(A) by striking ''The Secretary'' and inserting the following:

''(3) The Secretary''; and

(B) by striking ''one hundred and six thousand acres'' and inserting ''133,000 acres''.

PECOS NATIONAL HISTORICAL PARK LAND EXCHANGE ACT OF 2004

The Senate proceeded to consider the bill (S. 2622) to provide for the exchange of certain Federal land in the Santa Fe National Forest and certain non-Federal land in the Pecos National Historical Park in the State of New Mexico, which had been reported from the Committee on Energy and Natural Resources, with an amendment to strike all after the enacting clause and insert in lieu thereof the following:

(Strike the part shown in black brackets and insert the part shown in italic.)

S. 2622

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 ''Pecos National Historical Park Land Exchange Act of 2004''.

[SEC. 2. DEFINITIONS.

[In this Act:

[(1) FEDERAL LAND.—The term ''Federal land'' means the approximately 160 acres of Federal land within the Santa Fe National Forest in the State, as depicted on the map.

[(2) LANDOWNER.—The term ''landowner'' means the 1 or more owners of the non-Federal land.

[(3) MAP.—The term ''map'' means the map entitled ''Proposed Land Exchange for Pecos National Historical Park'', numbered 430/80,054, dated November 19, 1999, and revised September 18, 2000.

[(4) NON-FEDERAL LAND.—The term ''non-Federal land'' means the approximately 154 acres of non-Federal land in the Park, as depicted on the map.

[(5) PARK.—The term ''Park'' means the Pecos National Historical Park in the State.

[(6) SECRETARIES.—The term ''Secretaries'' means the Secretary of the Interior and the Secretary of Agriculture, acting jointly.

[(7) STATE.—The term ''State'' means the State of New Mexico.

[SEC. 3. LAND EXCHANGE.

[(a) IN GENERAL.—On conveyance by the landowner to the Secretary of the Interior of the non-Federal land, title to which is acceptable to the Secretary of the Interior.

[(1) the Secretary of Agriculture shall, subject to the conditions of this Act, convey to the landowner the Federal land; and

[(2) the Secretary of the Interior shall, subject to the conditions of this Act, grant to the landowner the easement described in subsection (b).

[(b) EASEMENT.—

[(1) IN GENERAL.—The easement referred to in subsection (a)(2) is an easement (including an easement for service access) for water pipelines to 2 well sites located in the Park, as generally depicted on the map.

[(2) ROUTE.—The Secretary of the Interior, in consultation with the landowner, shall determine the appropriate route of the easement through the Park.

[(3) TERMS AND CONDITIONS.—The easement shall include such terms and conditions relating to the use of, and access to, the well sites and pipeline, as the Secretary of the Interior, in consultation with the landowner, determines to be appropriate.

[(4) APPLICABLE LAW.—The easement shall be established, operated, and maintained in compliance with applicable Federal law.

[(c) VALUATION, APPRAISALS, AND EQUALIZATION.—

[(1) IN GENERAL.—The value of the Federal land and non-Federal land—

[(A) shall be equal, as determined by appraisals conducted in accordance with paragraph (2); or

[(B) if the value is not equal, shall be equalized in accordance with paragraph (3).

[(2) APPRAISALS.—

[(A) IN GENERAL.—The Federal land and non-Federal land shall be appraised by an independent appraiser selected by the Secretaries.

[(B) REQUIREMENTS.—An appraisal conducted under subparagraph (A) shall be conducted in accordance with—

[(i) the Uniform Appraisal Standards for Federal Land Acquisition; and

[(ii) the Uniform Standards of Professional Appraisal Practice.

[(C) APPROVAL.—The appraisals conducted under this paragraph shall be submitted to the Secretary of the Interior for approval.

[(3) EQUALIZATION OF VALUES.—

[(A) IN GENERAL.—If the values of the non-Federal land and the Federal land are not equal, the values may be equalized by—

[(i) the Secretary of the Interior making a cash equalization payment to the landowner;

[(ii) the landowner making a cash equalization payment to the Secretary of Agriculture; or

[(iii) reducing the acreage of the non-Federal land or the Federal land, as appropriate.

[(B) CASH EQUALIZATION PAYMENTS.—Any amounts received by the Secretary of Agriculture as a cash equalization payment under section 206(b) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716(b)) shall—

[(i) be deposited in the fund established by Public Law 90–171 (commonly known as the ''Sisk Act'') (16 U.S.C. 484a); and

[(ii) be available for expenditure, without further appropriation, for the acquisition of land and interests in land in the State.

[(d) COSTS.—Before the completion of the exchange under this section, the Secretaries and the landowner shall enter into an agreement that allocates the costs of the exchange between the Secretaries and the landowner.

[(e) APPLICABLE LAW.—Except as otherwise provided in this Act, the exchange of land and interests in land under this Act shall be in accordance with—

[(1) section 206 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716); and

[(2) other applicable laws, including the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

[(f) ADDITIONAL TERMS AND CONDITIONS.—The Secretaries may require, in addition to any requirements under this Act, such terms and conditions relating to the exchange of Federal land and non-Federal land and the granting of easements under this Act as the Secretaries determine to be appropriate to protect the interests of the United States.

[(g) COMPLETION OF THE EXCHANGE.—

[(1) IN GENERAL.—The exchange of Federal land and non-Federal land shall be completed not later than 180 days after the later of—

[(A) the date on which the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) have been met; or

[(B) the date on which the Secretary of the Interior approves the appraisals under subsection (c)(2)(C).

[(2) NOTICE.—The Secretaries shall submit to Committee on Energy and Natural Resources of the Senate and the Committee on Resources of the House of Representatives notice of the completion of the exchange of Federal land and non-Federal land under this Act.

[SEC. 4. ADMINISTRATION.

[(a) IN GENERAL.—The Secretary of the Interior shall administer the non-Federal land acquired under this Act in accordance with the laws generally applicable to units of the National Park System, including the Act of August 25, 1916 (commonly known as the ''National Park Service Organic Act'') (16 U.S.C. 1 et seq.).

[(b) MAPS.—

[(1) IN GENERAL.—The map shall be on file and available for public inspection in the appropriate offices of the Secretaries.

[(2) TRANSMITTAL OF REVISED MAP TO CONGRESS.—Not later than 180 days after completion of the exchange, the Secretaries shall

transmit to the Committee on Energy and Natural Resources of the United States and the Committee on Resources of the United States House of Representatives a revised map that depicts—

[(A) the Federal land and non-Federal land exchanged under this Act; and

[(B) the easement described in section 3(b).]

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Pecos National Historical Park Land Exchange Act of 2004''.

SEC. 2. DEFINITIONS.

In this Act:

(1) FEDERAL LAND.—The term ''Federal land'' means the approximately 160 acres of Federal land within the Santa Fe National Forest in the State, as depicted on the map.

(2) LANDOWNER.—The term ''landowner'' means the 1 or more owners of the non-Federal land.

(3) MAP.—The term ''map'' means the map entitled ''Proposed Land Exchange for Pecos National Historical Park'', numbered 430/80,054, dated November 19, 1999, and revised September 18, 2000.

(4) NON-FEDERAL LAND.—The term ''non-Federal land'' means the approximately 154 acres of non-Federal land in the Park, as depicted on the map.

(5) PARK.—The term ''Park'' means the Pecos National Historical Park in the State.

(6) SECRETARIES.—The term ''Secretaries'' means the Secretary of the Interior and the Secretary of Agriculture, acting jointly.

(7) STATE.—The term ''State'' means the State of New Mexico.

SEC. 3. LAND EXCHANGE.

(a) IN GENERAL.—On conveyance by the landowner to the Secretary of the Interior of the non-Federal land, title to which is acceptable to the Secretary of the Interior—

(1) the Secretary of Agriculture shall, subject to the conditions of this Act, convey to the landowner the Federal land; and

(2) the Secretary of the Interior shall, subject to the conditions of this Act, grant to the landowner the easement described in subsection (b).

(b) EASEMENT.—

(1) IN GENERAL.—The easement referred to in subsection (a)(2) is an easement (including an easement for service access) for water pipelines to 2 well sites located in the Park, as generally depicted on the map.

(2) ROUTE.—The Secretary of the Interior, in consultation with the landowner, shall determine the appropriate route of the easement through the Park.

(3) TERMS AND CONDITIONS.—The easement shall include such terms and conditions relating to the use of, and access to, the well sites and pipeline, as the Secretary of the Interior, in consultation with the landowner, determines to be appropriate.

(4) APPLICABLE LAW.—The easement shall be established, operated, and maintained in compliance with applicable Federal law.

(c) VALUATION, APPRAISALS, AND EQUALIZATION.—

(1) IN GENERAL.—The value of the Federal land and non-Federal land—

(A) shall be equal, as determined by appraisals conducted in accordance with paragraph (2); or

(B) if the value is not equal, shall be equalized in accordance with paragraph (3).

(2) APPRAISALS.—

(A) IN GENERAL.—The Federal land and non-Federal land shall be appraised by an independent appraiser selected by the Secretaries.

(B) REQUIREMENTS.—An appraisal conducted under subparagraph (A) shall be conducted in accordance with—

(i) the Uniform Appraisal Standards for Federal Land Acquisition; and

(ii) the Uniform Standards of Professional Appraisal Practice.

(C) APPROVAL.—The appraisals conducted under this paragraph shall be submitted to the Secretaries for approval.

(3) EQUALIZATION OF VALUES.—

(A) IN GENERAL.—If the values of the non-Federal land and the Federal land are not equal, the values may be equalized by—

(i) the Secretary of the Interior making a cash equalization payment to the landowner;

(ii) the landowner making a cash equalization payment to the Secretary of Agriculture; or

(iii) reducing the acreage of the non-Federal land or the Federal land, as appropriate.

(B) CASH EQUALIZATION PAYMENTS.—Any amounts received by the Secretary of Agriculture as a cash equalization payment under section 206(b) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716(b)) shall—

(i) be deposited in the fund established by Public Law 90–171 (commonly known as the ''Sisk Act'') (16 U.S.C. 484a); and

(ii) be available for expenditure, without further appropriation, for the acquisition of land and interests in land in the State.

(d) COSTS.—Before the completion of the exchange under this section, the Secretaries and the landowner shall enter into an agreement that allocates the costs of the exchange among the Secretaries and the landowner.

(e) APPLICABLE LAW.—Except as otherwise provided in this Act, the exchange of land and interests in land under this Act shall be in accordance with—

(1) section 206 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716); and

(2) other applicable laws, including the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(f) ADDITIONAL TERMS AND CONDITIONS.—The Secretaries may require, in addition to any requirements under this Act, such terms and conditions relating to the exchange of Federal land and non-Federal land and the granting of easements under this Act as the Secretaries determine to be appropriate to protect the interests of the United States.

(g) COMPLETION OF THE EXCHANGE.—

(1) IN GENERAL.—The exchange of Federal land and non-Federal land shall be completed not later than 180 days after the later of—

(A) the date on which the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) have been met;

(B) the date on which the Secretary of the Interior approves the appraisals under subsection (c)(2)(C); or

(C) the date on which the Secretaries and the landowner agree on the costs of the exchange and any other terms and conditions of the exchange under this section.

(2) NOTICE.—The Secretaries shall submit to the Committee on Energy and Natural Resources of the Senate and the Committee on Resources of the House of Representatives notice of the completion of the exchange of Federal land and non-Federal land under this Act.

SEC. 4. ADMINISTRATION.

(a) IN GENERAL.—The Secretary of the Interior shall administer the non-Federal land acquired under this Act in accordance with the laws generally applicable to units of the National Park System, including the Act of August 25, 1916 (commonly known as the ''National Park Service Organic Act'') (16 U.S.C. 1 et seq.).

(b) MAPS.—

(1) IN GENERAL.—The map shall be on file and available for public inspection in the appropriate offices of the Secretaries.

(2) TRANSMITTAL OF REVISED MAP TO CONGRESS.—Not later than 180 days after completion of the exchange, the Secretaries shall transmit to the Committee on Energy and Natural Resources of the Senate and the Committee on Resources of the House of Representatives a revised map that depicts—

(A) the Federal land and non-Federal land exchanged under this Act; and

(B) the easement described in section 3(b).

The committee amendment in the nature of a substitute was agreed to.

The bill (S. 2622) as amended, was read the third time and passed.

LAND EXCHANGE AT FORT FREDERICA NATIONAL MONUMENT

The Senate proceeded to consider the bill (H.R. 1113) to authorize an exchange of land at Fort Frederica National Monument, and for other purposes, which had been reported from the Committee on Energy and Natural Resources, with an amendment, as follows:

(Strike the part shown in black brackets and insert the part shown in italic.)

H.R. 1113

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

SECTION 1. EXCHANGE OF LANDS.

(a) IN GENERAL.—Notwithstanding [any other provision of law] *section 5(b) of Public Law 90–401 (16 U.S.C. 460l–22(b))*, the Secretary of the Interior is authorized to convey to Christ Church of St. Simons Island, Georgia, the approximately 6.0 acres of land within the boundary of Fort Frederica National Monument adjacent to Christ Church and depicted as ''NPS Lands for Exchange'' on the map entitled ''Fort Frederica National Monument 2003 Boundary Revision'' numbered 369/80016, and dated April 2003, in exchange for approximately 8.7 acres of land to be acquired by Christ Church, which is depicted as ''Private Lands for Addition'' on the same map.

(b) MAP AVAILABILITY.—The map referred to in subsection (a) shall be on file and available for public inspection in the appropriate offices of the National Park Service.

SEC. 2. BOUNDARY ADJUSTMENT.

Upon completion of the land exchange under subsection (a) of section 1, the Secretary of the Interior shall revise the boundary of Fort Frederica National Monument to reflect the exchange and shall administer the land acquired through the exchange as part of that monument.

The committee amendment was agreed to.

The bill (H.R. 1113), as amended, was read the third time and passed.

CALIFORNIA MISSIONS PRESERVATION ACT

The Senate proceeded to consider the bill (H.R. 1446) to support the efforts of the California Missions Foundation to restore and repair the Spanish colonial and mission-era missions in the State of California and to preserve the artworks and artifacts of these missions, and for other purposes, which had been reported from the Committee on Energy and Natural Resources, with an amendment to strike all after the enactiing clause and insert in lieu thereof the following:

(Strike the part shown in black brackets and insert the part shown in italic.)

H.R. 1446

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 ''California Missions Preservation Act''.

[SEC. 2. FINDINGS.

[Congress finds the following:

[(1) The California missions represent some of our Nation's oldest historical treasures.

[(2) The first of the California missions was founded in 1769, and eventually a chain of 21 missions and various sub-missions extended along the coast of California on El Camino Real.

[(3) The California missions contribute greatly to the rich historical, cultural, and architectural heritage of California and the American West.

[(4) The knowledge and cultural influence of native California Indians made a lasting contribution to the early settlement of California and the development of the California missions.

[(5) More than 5,300,000 people visit the California missions annually, and the historical importance of the California missions extends worldwide as they have become a frequent destination for foreign visitors to the United States.

[(6) The history of the California missions is an important educational component in California schools, and the study of the California missions is part of the Statewide fourth grade curricula on California history.

[(7) Restoration and repair of the California missions, and the preservation of the Spanish colonial and mission-era artworks and artifacts of the California missions, for the public enjoyment will ensure that future generations also have the benefit of experiencing and appreciating these great symbols of the spirit of exploration and discovery in the American West.

[SEC. 3. SUPPORT FOR THE RESTORATION AND PRESERVATION OF THE CALIFORNIA MISSIONS.

[(a) DEFINITIONS.—In this section:

[(1) CALIFORNIA MISSIONS.—The term ''California missions'' means the following historic Spanish missions located in the State of California and designated as California Registered Historical Landmarks:

[(A) Mission La Purisima Concepcion, Lompoc.

[(B) Mission La Soledad, Soledad.

[(C) Mission San Antonio de Padua, Jolon.

[(D) Mission San Buenaventura, Ventura.

[(E) Mission San Carlos Borromeo del Rio Carmelo, Carmel.

[(F) Mission San Diego Alcala, San Diego.

[(G) Mission San Fernando Rey de Espana, Mission Hills.

[(H) Mission San Francisco de Asis, San Francisco.

[(I) Mission San Francisco Solano, Sonoma.

[(J) Mission San Gabriel Arcangel, San Gabriel.

[(K) Mission San Jose, Fremont.

[(L) Mission San Juan Bautista, San Juan Bautista.

[(M) Mission San Juan Capistrano, San Juan Capistrano.

[(N) Mission San Luis Obispo de Tolosa and its Asistencia (sub-mission) of Santa Margarita de Cortona, San Luis Obispo.

[(O) Mission San Luis Rey de Francia and its Asistencia (sub-mission), Oceanside.

[(P) Mission San Miguel Arcangel, San Miguel.

[(Q) Mission San Rafael Arcangel, San Rafael.

[(R) Mission Santa Barbara Virgen y Martir, Santa Barbara.

[(S) Mission Santa Clara de Asis, Santa Clara.

[(T) Mission Santa Cruz, Santa Cruz.

[(U) Mission Santa Ines Virgen y Martir, Solvang.

[(V) Asistencia San Antonio de Pala, Pala.

[(2) CALIFORNIA MISSIONS FOUNDATION.—The term ''California Missions Foundation'' means the charitable corporation established in the State of California in 1998 to fund the restoration and repair of the California missions and the preservation of the Spanish colonial and mission-era artworks and artifacts of the California missions. The Foundation is exempt from State franchise and income tax and is organized and operated exclusively for charitable purposes under section 501(c)(3) of the Internal Revenue Code of 1986.

[(3) SECRETARY.—The term ''Secretary'' means the Secretary of the Interior.

[(b) GRANTS AUTHORIZED.—The Secretary of the Interior may make grants to the California Missions Foundation to support the efforts of the California Missions Foundation to restore and repair the California missions and to preserve the artworks and artifacts associated with the California missions. As provided in section 101(e)(4) of the National Historic Preservation Act (16 U.S.C. 470a(e)(4)), the Secretary shall ensure that the purpose of a grant under this section is secular, does not promote religion, and seeks to protect those qualities that are historically significant.

[(c) APPLICATION.—In order to receive a grant under this section for the preservation of the California missions, the California Missions Foundation shall submit to the Secretary an application that includes—

[(1) a status report on the condition of the infrastructure and artifacts for each of the California missions; and

[(2) a comprehensive program for restoration, repair, and preservation of such infrastructure and artifacts, including prioritized preservation efforts to be conducted over a 5-year period and the estimated costs of such preservation efforts.

[(d) MATCHING FUND REQUIREMENT.—The Secretary shall require the California Missions Foundation to match grant funds provided under this section.

[(e) REPORT.—As a condition of a grant under this section, the California Missions Foundation shall submit to the Secretary an annual report on the status of the preservation efforts undertaken using grant funds provided under this section. The Secretary shall submit a copy of each report to Congress.

[(f) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Secretary a total of $10,000,000 during the five-fiscal year period beginning October 1, 2003, to make grants under this section. Funds appropriated pursuant to the authorization of appropriations in this section shall be in addition to any funds made available for preservation efforts in the State of California under the National Historic Preservation Act.]

SECTION 1. SHORT TITLE.

This Act may be cited as the ''California Missions Preservation Act''.

SEC. 2. DEFINITIONS.

In this Act:

(1) CALIFORNIA MISSION.—The term ''California mission'' means each of the 21 historic Spanish missions and 1 asistencia that—

(A) are located in the State;

(B) were built between 1769 and 1798; and

(C) are designated as California Registered Historic Landmarks.

(2) FOUNDATION.—The term ''Foundation'' means the California Missions Foundation, a nonsectarian charitable corporation that—

(A) was established in the State in 1998 to fund the restoration and repair of the California missions; and

(B) is operated exclusively for charitable purposes under section 501(c)(3) of the Internal Revenue Code of 1986.

(3) SECRETARY.—The term ''Secretary'' means the Secretary of the Interior.

(4) STATE.—The term ''State'' means the State of California.

SEC. 3. COOPERATIVE AGREEMENTS.

(a) IN GENERAL.—The Secretary may enter into a cooperative agreement with the Foundation to provide technical and financial assistance to the Foundation to restore and repair—

(1) the California missions; and

(2) the artwork and artifacts associated with the California missions.

(b) FINANCIAL ASSISTANCE.—

(1) IN GENERAL.—The cooperative agreement may authorize the Secretary to make grants to the Foundation to carry out the purposes described in subsection (a).

(2) ELIGIBILITY.—To be eligible to receive a grant or other form of financial assistance under this Act, a California mission must be listed on the National Register of Historic Places.

(3) APPLICATION.—To receive a grant or other form of financial assistance under this Act, the Foundation shall submit to the Secretary an application that—

(A) includes a status report on the condition of the infrastructure and associated artifacts of each of the California missions for which the Foundation is seeking financial assistance; and

(B) describes a comprehensive program for the restoration, repair, and preservation of the infrastructure and artifacts referred to in subparagraph (A), including—

(i) a description of the prioritized preservation activities to be conducted over a 5-year period; and

(ii) an estimate of the costs of the preservation activities.

(4) APPLICABLE LAW.—Consistent with section 101(e)(4) of the National Historic Preservation Act (16 U.S.C. 470a(e)(4)), the Secretary shall ensure that the purpose of any grant or other financial assistance provided by the Secretary to the Foundation under this Act—

(A) is secular;

(B) does not promote religion; and

(C) seeks to protect qualities that are historically significant.

(c) REVIEW AND DETERMINATION.—

(1) IN GENERAL.—The Secretary shall submit a proposed agreement to the Attorney General for review.

(2) DETERMINATION.—A cooperative agreement entered into under subsection (a) shall not take effect until the Attorney General issues a finding that the proposed agreement submitted under paragraph (1) does not violate the establishment clause of the first amendment of the Constitution.

(d) REPORT.—As a condition of receiving financial assistance under this Act, the Foundation shall annually submit to the Secretary and to the Committee on Energy and Natural Resources of the Senate and the Committee on Resources of the House of Representatives a report that describes the status of the preservation activities carried out using amounts made available under this Act.

SEC. 4. AUTHORIZATION OF APPROPRIATIONS.

(a) IN GENERAL.—There is authorized to be appropriated to carry out this Act $10,000,000 for the period of fiscal years 2004 through 2009.

(b) MATCHING REQUIREMENT.—Any amounts made available to carry out this Act shall be matched on not less than a 1-to-1 basis by the Foundation.

(c) OTHER AMOUNTS.—Any amounts made available to carry out this Act shall be in addition to any amounts made available for preservation activities in the State under the National Historic Preservation Act (16 U.S.C. 470 et seq.).

The committee amendment in the nature of a substitute was agreed to.

The bill (H.R. 1446), as amended, was read the third time and passed.

HIGHLANDS CONSERVATION ACT

The Senate proceeded to consider the bill (H.R. 1964) to assist the States of Connecticut, New Jersey, New York, and Pennsylvania in conserving priority lands and natural resources in the Highlands region, and for other purposes, which had been reported from the Committee on Energy and Natural Resources, with an amendment to strike all after the enacting clause and insert in lieu thereof the following:

(Strike the part shown in black brackets and insert the part shown in italic.)

H.R. 1964

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 ''Highlands Conservation Act''.

[SEC. 2. FINDINGS.

[Congress finds the following—

[(1) The Highlands region is a physiographic province that encompasses more than 2,000,000 acres extending from eastern Pennsylvania through the States of New Jersey and New York to northwestern Connecticut.

[(2) The Highlands region is an environmentally unique area that—

[(A) provides clean drinking water to over 15,000,000 people in metropolitan areas in the States of Connecticut, New Jersey, New York, and Pennsylvania;

[(B) provides critical wildlife habitat, including habitat for 247 threatened and endangered species;

[(C) maintains an important historic connection to early Native American culture, colonial settlement, the American Revolution, and the Civil War;

[(D) contains recreational resources for 14 million visitors annually;

[(E) provides other significant ecological, natural, tourism, recreational, educational, and economic benefits; and

[(F) provides homeownership opportunities and access to affordable housing that is safe, clean, and healthy.

[(3) An estimated 1 in 12 citizens of the United States live within a 2-hour drive of the Highlands region.

[(4) More than 1,400,000 residents live in the Highlands region.

[(5) The Highlands region forms a greenbelt adjacent to the Philadelphia-New York City-Hartford urban corridor that offers the opportunity to preserve water, forest and agricultural resources, wildlife habitat, recreational areas, and historic sites, while encouraging sustainable economic growth and development in a fiscally and environmentally sound manner.

[(6) Continued population growth and land use patterns in the Highlands region—

[(A) reduce the availability and quality of water;

[(B) reduce air quality;

[(C) fragment the forests;

[(D) destroy critical migration corridors and forest habitat; and

[(E) result in the loss of recreational opportunities and scenic, historic, and cultural resources.

[(7) The water, forest, wildlife, recreational, agricultural, and cultural resources of the Highlands region, in combination with the proximity of the Highlands region to the largest metropolitan areas in the United States, make the Highlands region nationally significant.

[(8) The national significance of the Highlands region has been documented in—

[(A) the New York-New Jersey Highlands Regional Study conducted by the Forest Service in 1990;

[(B) the New York-New Jersey Highlands Regional Study: 2002 Update conducted by the Forest Service;

[(C) the bi-State Skylands Greenway Task Force Report;

[(D) the New Jersey State Development and Redevelopment Plan;

[(E) the New York State Open Space Conservation Plan;

[(F) the Connecticut Green Plan: Open Space Acquisition FY 2001–2006;

[(G) the open space plans of the State of Pennsylvania; and

[(H) other open space conservation plans for States in the Highlands region.

[(9) The Highlands region includes or is adjacent to numerous parcels of land owned by the Federal Government or federally designated areas that protect, conserve, or restore resources of the Highlands region, including—

[(A) the Wallkill River National Wildlife Refuge;

[(B) the Shawanagunk Grasslands Wildlife Refuge;

[(C) the Morristown National Historical Park;

[(D) the Delaware and Lehigh Canal Corridors;

[(E) the Hudson River Valley National Heritage Area;

[(F) the Delaware River Basin;

[(G) the Delaware Water Gap National Recreation Area;

[(H) the Upper Delaware Scenic and Recreational River;

[(I) the Appalachian National Scenic Trail;

[(J) the United States Military Academy at West Point, New York;

[(K) the Highlands National Millenium Trail;

[(L) the Great Swamp National Wildlife Refuge;

[(M) the proposed Crossroads of the Revolution National Heritage Area;

[(N) the proposed Musconetcong National Scenic and Recreational River in New Jersey; and

[(O) the Farmington River Wild and Scenic Area in Connecticut.

[(10) It is in the interest of the United States to protect, conserve, and restore the resources of the Highlands region for the residents of, and visitors to, the Highlands region.

[(11) The States of Connecticut, New Jersey, New York, and Pennsylvania, and units of local government in the Highlands region have the primary responsibility for protecting, conserving, preserving, restoring and promoting the resources of the Highlands region.

[(12) Because of the longstanding Federal practice of assisting States in creating, protecting, conserving, and restoring areas of significant natural and cultural importance, and the national significance of the Highlands region, the Federal Government should, in partnership with the Highlands States and units of local government in the Highlands region, protect, restore, and preserve the water, forest, agricultural, wildlife, recreational and cultural resources of the Highlands region.

[SEC. 3. PURPOSES.

[The purposes of this Act are as follows:

[(1) To recognize the importance of the water, forest, agricultural, wildlife, recreational and cultural resources of the Highlands, and the national significance of the Highlands region to the United States.

[(2) To authorize the Secretary of the Interior to work in partnership with the Secretary of Agriculture to provide financial assistance to the Highlands States to preserve and protect high priority conservation lands in the Highlands region.

[(3) To continue the ongoing Forest Service programs in the Highlands region to assist the Highlands States, local units of government and private forest and farm landowners in the conservation of lands and natural resources in the Highlands region.

[SEC. 4. DEFINITIONS.

[In this Act:

[(1) HIGHLANDS REGION.—The term ''Highlands region'' means the physiographic province, defined by the Reading Prong and ecologically similar adjacent upland areas, that encompasses more than 2,000,000 acres extending from eastern Pennsylvania through the States of New Jersey and New York to northwestern Connecticut.

[(2) HIGHLANDS STATE.—The term ''Highlands State'' means—

[(A) the State of Connecticut;

[(B) the State of New Jersey;

[(C) the State of New York;

[(D) the State of Pennsylvania; and

[(E) any agency or department of any Highlands State.

[(3) LAND CONSERVATION PARTNERSHIP PROJECT.—The term ''land conservation partnership project'' means a land conservation project located within the Highlands region identified as having high conservation value by the Forest Service in which a non-Federal entity acquires land or an interest in land from a willing seller for the purpose of permanently protecting, conserving, or preserving the land through a partnership with the Federal Government.

[(4) NON-FEDERAL ENTITY.—The term ''non-Federal entity'' means any Highlands State, or any agency or department of any Highlands State with authority to own and manage land for conservation purposes, including the Palisades Interstate Park Commission.

[(5) STUDY.—The term ''study'' means the New York-New Jersey Highlands Regional Study conducted by the Forest Service in 1990.

[(6) UPDATE.—The term ''update'' means the New York-New Jersey Highlands Regional Study: 2002 Update conducted by the Forest Service.

[SEC. 5. LAND CONSERVATION PARTNERSHIP PROJECTS IN THE HIGHLANDS REGION.

[(a) SUBMISSION OF PROPOSED PROJECTS.—Annually, the Governors of the Highlands States, with input from pertinent units of local government and the public, may jointly identify land conservation partnership projects in the Highlands region that shall be proposed for Federal financial assistance and submit a list of those projects to the Secretary of the Interior.

[(b) CONSIDERATION OF PROJECTS.—The Secretary of the Interior, in consultation with the Secretary of Agriculture, shall annually submit to Congress a list of those land conservation partnership projects submitted under subsection (a) that are eligible to receive financial assistance under this section.

[(c) ELIGIBILITY CONDITIONS.—To be eligible for financial assistance under this section for a land conservation partnership project, a non-Federal entity shall enter into an agreement with the Secretary of the Interior that—

[(1) identifies the non-Federal entity that shall own or hold and manage the land or interest in land;

[(2) identifies the source of funds to provide the non-Federal share required under subsection (d);

[(3) describes the management objectives for the land that will assure permanent protection and use of the land for the purpose for which the assistance will be provided;

[(4) provides that, if the non-Federal entity converts, uses, or disposes of the land conservation partnership project for a purpose inconsistent with the purpose for which the assistance was provided, as determined by the Secretary of the Interior, the United States may seek specific performance of the conditions of financial assistance in accordance with paragraph (3) in Federal court and shall be entitled to reimbursement from the non-Federal entity in an amount that is, as determined at the time of conversion, use, or disposal, the greater of—

[(A) the total amount of the financial assistance provided for the project by the Federal Government under this section; or

[(B) the amount by which the financial assistance increased the value of the land or interest in land; and

[(5) provides that land conservation partnership projects will be consistent with areas identified as having high conservation value in the following:

[(A) Important Areas portion of the Forest Service study.

[(B) Conservation Focal Areas portion of the Forest Service update.

[(C) Conservation Priorities portion of the update.

[(D) Lands identified as having higher or highest resource value in the Conservation Values Assessment portion of the update.

[(d) NON-FEDERAL SHARE REQUIREMENT.—The Federal share of the cost of carrying out a land conservation partnership project under this section shall not exceed 50 percent of the total cost of the land conservation partnership project.

[(e) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Secretary of the Interior from the general funds of the Treasury or the Land and Water Conservation Fund to carry out this section $10,000,000 for each of the fiscal years 2005 through 2014. Amounts appropriated pursuant to this authorization of appropriations shall remain available until expended.

[SEC. 6. FOREST SERVICE AND USDA PROGRAMS IN THE HIGHLANDS REGION.

[(a) IN GENERAL.—In order to meet the land resource goals of, and the scientific and conservation challenges identified in, the study, update, and any future study that the Forest Service may undertake in the Highlands region, the Secretary of Agriculture, acting through the Chief of the Forest Service and in consultation with the Chief of the National Resources Conservation Service, shall continue to assist the Highlands States, local units of government, and private forest and farm landowners in the conservation of lands and natural resources in the Highlands region.

[(b) DUTIES.—The Forest Service shall—

[(1) in consultation with the Highlands States, undertake other studies and research as appropriate in the Highlands region consistent with the purposes of this Act;

[(2) communicate the findings of the study and update and maintain a public dialogue regarding implementation of the study and update; and

[(3) assist the Highland States, local units of government, individual landowners, and private organizations in identifying and using Forest Service and other technical and financial assistance programs of the Department of Agriculture.

[(c) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Secretary of Agriculture to carry out this section $1,000,000 for each of the fiscal years 2005 through 2014.

[SEC. 7. PRIVATE PROPERTY PROTECTION AND LACK OF REGULATORY EFFECT.

[(a) ACCESS TO PRIVATE PROPERTY.—Nothing in this Act shall be construed to—

[(1) require any private property owner to permit public access (including Federal, State, or local government access) to such private property; and

[(2) modify any provision of Federal, State, or local law with regard to public access to or use of private lands.

[(b) LIABILITY.—Nothing in this Act shall be construed to create any liability, or to have any effect on any liability under any other law, of any private property owner with respect to any persons injured on such private property.

[(c) RECOGNITION OF AUTHORITY TO CONTROL LAND USE.—Nothing in this Act shall be construed to modify any authority of Federal, State, or local governments to regulate land use.

[(d) PARTICIPATION OF PRIVATE PROPERTY OWNERS.—Nothing in this Act shall be construed to require the owner of any private property located in the Highlands region to participate in the land conservation, financial, or technical assistance or any other programs established under this Act.

[(e) PURCHASE OF LANDS OR INTERESTS IN LANDS FROM WILLING SELLERS ONLY.—Funds appropriated to carry out this Act shall be used to purchase lands or interests in lands only from willing sellers.]

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Highlands Conservation Act''.

SEC. 2. PURPOSES.

The purposes of this Act are—

(1) to recognize the importance of the water, forest, agricultural, wildlife, recreational, and cultural resources of the Highlands region, and the national significance of the Highlands region to the United States;

(2) to authorize the Secretary of the Interior to work in partnership with the Secretary of Agriculture to provide financial assistance to the Highlands States to preserve and protect high priority conservation land in the Highlands region; and

(3) to continue the ongoing Forest Service programs in the Highlands region to assist the Highlands States, local units of government, and private forest and farm landowners in the conservation of land and natural resources in the Highlands region.

SEC. 3. DEFINITIONS.

In this Act:

(1) HIGHLANDS REGION.—The term ''Highlands region'' means the area depicted on the map entitled ''The Highlands Region'', dated June 2004, including the list of municipalities included in the Highlands region, and maintained in the headquarters of the Forest Service in Washington, District of Columbia.

(2) HIGHLANDS STATE.—The term ''Highlands State'' means—

(A) the State of Connecticut;

(B) the State of New Jersey;

(C) the State of New York; and

(D) the State of Pennsylvania.

(3) LAND CONSERVATION PARTNERSHIP PROJECT.—The term ''land conservation partnership project'' means a land conservation project—

(A) located in the Highlands region;

(B) identified by the Forest Service in the Study, the Update, or any subsequent Pennsylvania and Connecticut Update as having high conservation value; and

(C) in which a non-Federal entity acquires land or an interest in land from a willing seller to permanently protect, conserve, or preserve the land through a partnership with the Federal Government.

(4) NON-FEDERAL ENTITY.—The term ''non-Federal entity'' means—

(A) any Highlands State; or

(B) any agency or department of any Highlands State with authority to own and manage land for conservation purposes, including the Palisades Interstate Park Commission.

(5) STUDY.—The term ''Study'' means the New York-New Jersey Highlands Regional Study conducted by the Forest Service in 1990.

(6) UPDATE.—The term ''Update'' means the New York-New Jersey Highlands Regional Study: 2002 Update conducted by the Forest Service.

(7) PENNSYLVANIA AND CONNECTICUT UPDATE.—The term ''Pennsylvania and Connecticut Update'' means a report to be completed by the Forest Service that identifies areas having high conservation values in the States of Connecticut and Pennsylvania in a manner similar to that utilized in the Study and Update.

SEC. 4. LAND CONSERVATION PARTNERSHIP PROJECTS IN THE HIGHLANDS REGION.

(a) SUBMISSION OF PROPOSED PROJECTS.—Each year, the governors of the Highlands States, with input from pertinent units of local government and the public, may—

(1) jointly identify land conservation partnership projects in the Highlands region from land identified as having high conservation values in the Study, the Update, or the Pennsylvania and Connecticut Update that shall be proposed for Federal financial assistance; and

(2) submit a list of those projects to the Secretary of the Interior.

(b) CONSIDERATION OF PROJECTS.—Each year, the Secretary of the Interior, in consultation with the Secretary of Agriculture, shall submit to Congress a list of the land conservation partnership projects submitted under subsection (a)(2) that are eligible to receive financial assistance under this section.

(c) ELIGIBILITY CONDITIONS.—To be eligible for financial assistance under this section for a land conservation partnership project, a non-Federal entity shall enter into an agreement with the Secretary of the Interior that—

(1) identifies the non-Federal entity that shall own or hold and manage the land or interest in land;

(2) identifies the source of funds to provide the non-Federal share under subsection (d);

(3) describes the management objectives for the land that will ensure permanent protection and use of the land for the purpose for which the assistance will be provided;

(4) provides that, if the non-Federal entity converts, uses, or disposes of the land conservation partnership project for a purpose inconsistent with the purpose for which the assistance was provided, as determined by the Secretary of the Interior, the United States—

(A) may seek specific performance of the conditions of financial assistance in accordance with paragraph (3) in Federal court; and

(B) shall be entitled to reimbursement from the non-Federal entity in an amount that is, as determined at the time of conversion, use, or disposal, the greater of—

(i) the total amount of the financial assistance provided for the project by the Federal Government under this section; or

(ii) the amount by which the financial assistance increased the value of the land or interest in land; and

(5) provides that land conservation partnership projects will be consistent with areas identified as having high conservation value in—

(A) the Important Areas portion of the Study;

(B) the Conservation Focal Areas portion of the Update;

(C) the Conservation Priorities portion of the Update;

(D) land identified as having higher or highest resource value in the Conservation Values Assessment portion of the Update; and

(E) land identified as having high conservation value in the Pennsylvania and Connecticut Update.

(d) NON-FEDERAL SHARE REQUIREMENT.—The Federal share of the cost of carrying out a land conservation partnership project under this section shall not exceed 50 percent of the total cost of the land conservation partnership project.

(e) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Secretary of the Interior $10,000,000 for each of fiscal years 2005 through 2014, to remain available until expended.

SEC. 5. FOREST SERVICE AND USDA PROGRAMS IN THE HIGHLANDS REGION.

(a) IN GENERAL.—To meet the land resource goals of, and the scientific and conservation challenges identified in, the Study, Update, and any future study that the Forest Service may undertake in the Highlands region, the Secretary of Agriculture, acting through the Chief of the Forest Service and in consultation with the Chief of the National Resources Conservation Service, shall continue to assist the Highlands States, local units of government, and private forest and farm landowners in the conservation of land and natural resources in the Highlands region.

(b) DUTIES.—The Forest Service shall—

(1) in consultation with the Highlands States, undertake other studies and research in the Highlands region consistent with the purposes of this Act, including a Pennsylvania and Connecticut Update;

(2) communicate the findings of the Study and Update and maintain a public dialogue regarding implementation of the Study and Update; and

(3) assist the Highland States, local units of government, individual landowners, and private organizations in identifying and using Forest Service and other technical and financial assistance programs of the Department of Agriculture.

(c) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Secretary of Agriculture to carry out this section $1,000,000 for each of fiscal years 2005 through 2014.

SEC. 6. PRIVATE PROPERTY PROTECTION AND LACK OF REGULATORY EFFECT.

(a) ACCESS TO PRIVATE PROPERTY.—Nothing in this Act—

(1) requires a private property owner to permit public access (including Federal, State, or local government access) to private property; or

(2) modifies any provision of Federal, State, or local law with regard to public access to, or use of, private land.

(b) LIABILITY.—Nothing in this Act creates any liability, or has any effect on liability under any other law, of a private property owner with respect to any persons injured on the private property.

(c) RECOGNITION OF AUTHORITY TO CONTROL LAND USE.—Nothing in this Act modifies any authority of Federal, State, or local governments to regulate land use.

(d) PARTICIPATION OF PRIVATE PROPERTY OWNERS.—Nothing in this Act requires the owner of any private property located in the Highlands region to participate in the land conservation, financial, or technical assistance or any other programs established under this Act.

(e) PURCHASE OF LAND OR INTERESTS IN LAND FROM WILLING SELLERS ONLY.—Funds appropriated to carry out this Act shall be used to purchase land or interests in land only from willing sellers.

The committee amendment in the nature of a substitute was agreed to.

The bill (H.R. 1964), as amended, was read the third time and passed.

VOTING RIGHTS OF MEMBERS OF THE ARMED SERVICES FOR THE DELEGATE REPRESENTING AMERICAN SAMOA

The bill (H.R. 2010) to protect the voting rights of members of the Armed Services in elections for the Delegate representing American Samoa in the United States House of Representatives, and for other purposes, was considered, ordered to a third reading, read the third time, and passed.

H.R. 2010

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

SECTION 1. FINDINGS.

Congress finds the following:

(1) It is in the national interest that qualifying members of the Armed Forces on active duty and other overseas voters be allowed to vote in Federal elections.

(2) Since 1980, when the first election for the Congressional Delegate from American Samoa was held, general elections have been held in the first week of November in even-numbered years and runoff elections have been held 2 weeks later.

(3) This practice of holding a run-off election 2 weeks after a general election deprives members of the Armed Forces on active duty and other overseas voters of the opportunity to participate in the Federal election process in American Samoa.

(4) Prior to and since September 11, 2001, and due to limited air service, mail delays, and other considerations, it has been and remains impossible for absentee ballots to be prepared and returned within a 2-week period.

(5) American Samoa law requiring members of the Armed Forces on active duty and other overseas voters to register in person also prevents participation in the Federal election process and is contrary to the Uniformed and Overseas Citizens Absentee Voting Act.

(6) Given that 49 states elect their Representatives to the United States House of Representatives by plurality, it is in the national interest for American Samoa to do the same until such time as the American Samoa Legislature establishes primary elections and declares null and void the local practice of requiring members of the Armed Forces on active duty and other overseas voters to register in person which is contrary to the federal Uniformed and Overseas Citizens Absentee Voting Act.

SEC. 2. PLURALITY OF VOTES REQUIRED FOR ELECTION OF DELEGATE.

Section 2 of the Act entitled ''An Act to provide that the Territory of American Samoa be represented by a nonvoting Delegate to the United States House of Representatives, and for other purposes'', approved October 31, 1978 (48 U.S.C. 1732; Public Law 95–556) is amended—

(1) in subsection (a)—

(A) by striking ''majority'' and inserting ''plurality'' the first place it appears; and

(B) by striking ''If no candidate'' and all that follows through ''office of Delegate.''; and

(2) by adding at the end the following new subsections:

''(c) ESTABLISHMENT OF PRIMARY ELECTIONS.—The legislature of American Samoa may, but is not required to, provide for primary elections for the election of Delegate.

''(d) EFFECT OF ESTABLISHMENT OF PRIMARY ELECTIONS.—Notwithstanding subsection (a), if the legislature of American Samoa provides for primary elections for the election of Delegate, the Delegate shall be elected by a majority of votes cast in any subsequent general election for the office of Delegate for which such primary elections were held.''.

SEC. 3. EFFECTIVE DATES.

The amendments made by paragraph (1) of section 2 shall take effect on January 1, 2006. The amendment made by paragraph (2) of section 2 shall take effect on January 1, 2005.

JOHN MUIR NATIONAL HISTORIC SITE BOUNDARY ADJUSTMENT ACT

The bill (H.R. 3706) to adjust the boundary of the John Muir National Historic Site, and for other purposes, was considered, ordered to a third reading, read the third time, and passed.

H.R. 3706

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 ''John Muir National Historic Site Boundary Adjustment Act''.

SEC. 2. BOUNDARY ADJUSTMENT.

(a) BOUNDARY.—The boundary of the John Muir National Historic Site is adjusted to include the lands generally depicted on the map entitled ''Boundary Map, John Muir National Historic Site'' numbered PWR–OL 426–80,044a and dated August 2001.

(b) LAND ACQUISITION.—The Secretary of the Interior is authorized to acquire the lands and interests in lands identified as the ''Boundary Adjustment Area'' on the map referred to in subsection (a) by donation, purchase with donated or appropriated funds, exchange, or otherwise.

(c) ADMINISTRATION.—The lands and interests in lands described in subsection (b) shall be administered as part of the John Muir National Historic Site established by the Act of August 31, 1964 (78 Stat. 753; 16 U.S.C. 461 note).

DEPARTMENT OF ENERGY HIGH-END COMPUTING REVITALIZATION ACT OF 2004

The Senate proceeded to consider the bill (H.R. 4516) to require the Secretary of Energy to carry out a program of research and development to advance high-end computing, which had been reported from the Committee on Energy and Natural Resources, with an amendment to strike all after the enacting clause and insert in lieu thereof the following:

(Strike the part shown in black brackets and insert the part shown in italic.)

H.R. 4516

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 ''Department of Energy High-End Computing Revitalization Act of 2004''.

[SEC. 2. DEFINITIONS.

[For purposes of this Act:

[(1) HIGH-END COMPUTING SYSTEM.—The term ''high-end computing system'' means a computing system with performance that substantially exceeds that of systems that are commonly available for advanced scientific and engineering applications.

[(2) LEADERSHIP SYSTEM.—The term ''Leadership System'' means a high-end computing system that is among the most advanced in the world in terms of performance in solving scientific and engineering problems.

[(3) INSTITUTION OF HIGHER EDUCATION.—The term ''institution of higher education'' has the meaning given the term in section 101(a) of the Higher Education Act of 1965 (20 U.S.C. 1001(a)).

[(4) SECRETARY.—The term ''Secretary'' means the Secretary of Energy.

[SEC. 3. DEPARTMENT OF ENERGY HIGH-END COMPUTING RESEARCH AND DEVELOPMENT PROGRAM.

[(a) IN GENERAL.—The Secretary shall carry out a program of research and development (involving software and hardware) to advance high-end computing systems, and shall develop and deploy such systems for advanced scientific and engineering applications.

[(b) PROGRAM.—The program shall—

[(1) support both individual investigators and multidisciplinary teams of investigators;

[(2) conduct research in multiple architectures, which may include vector, reconfigurable logic, streaming, processor-in-memory, and multithreading architectures;

[(3) conduct research on software for high-end computing systems, including research on algorithms, programming environments, tools, languages, and operating systems for high-end computing systems, in collaboration with architecture development efforts;

[(4) provide for sustained access by the research community in the United States to high-end computing systems and to Leadership Systems, including provision for technical support for users of such systems;

[(5) support technology transfer to the private sector and others in accordance with applicable law; and

[(6) ensure that the high-end computing activities of the Department of Energy are coordinated with relevant activities in industry and with other Federal agencies, including the National Science Foundation, the Defense Advanced Research Projects Agency, the National Security Agency, the National Institutes of Health, the National Aeronautics and Space Administration, the National Oceanic and Atmospheric Administration, the National Institute of Standards and Technology, and the Environmental Protection Agency.

[(c) LEADERSHIP SYSTEMS FACILITIES.—

[(1) IN GENERAL.—As part of the program carried out under this Act, the Secretary shall establish and operate Leadership Systems facilities to—

[(A) conduct advanced scientific and engineering research and development using Leadership Systems; and

[(B) develop potential advancements in high-end computing system hardware and software.

[(2) ADMINISTRATION.—In carrying out this subsection, the Secretary shall provide access to Leadership Systems on a competitive, merit-reviewed basis to researchers in United States industry, institutions of higher education, national laboratories, and other Federal agencies.

[SEC. 4. AUTHORIZATION OF APPROPRIATIONS.

[In addition to amounts otherwise made available for high-end computing, there are authorized to be appropriated to the Secretary to carry out this Act—

[(1) $50,000,000 for fiscal year 2005;

[(2) $55,000,000 for fiscal year 2006; and

[(3) $60,000,000 for fiscal year 2007.

[SEC. 5. SOCIETAL IMPLICATIONS OF INFORMATION TECHNOLOGY.

[In carrying out its programs on the social, economic, legal, ethical, and cultural implications of information technology, the National Science Foundation shall support research into the implications of computers (including both hardware and software) that would be capable of mimicking human abilities to learn, reason, and make decisions.

[SEC. 6. ASTRONOMY AND ASTROPHYSICS ADVISORY COMMITTEE.

[(a) AMENDMENTS.—Section 23 of the National Science Foundation Authorization Act of 2002 (42 U.S.C. 1862n–9) is amended—

[(1) by striking ''and the National Aeronautics and Space Administration'' each place it appears in subsections (a) and (b) and inserting '', the National Aeronautics and Space Administration, and the Department of Energy'';

[(2) in subsection (b)(3), by inserting ''the Secretary of Energy,'' after ''the Administrator of the National Aeronautics and Space Administration,'';

[(3) in subsection (c)—

[(A) by striking ''5'' in each of paragraphs (1) and (2) and inserting ''4'';

[(B) by striking ''and'' at the end of paragraph (2);

[(C) by redesignating paragraph (3) as paragraph (4), and in that paragraph by striking ''3'' and inserting ''2''; and

[(D) by inserting after paragraph (2) the following new paragraph:

[''(3) 3 members selected by the Secretary of Energy; and''; and

[(4) in subsection (f), by striking ''the advisory bodies of other Federal agencies, such as the Department of Energy, which may engage in related research activities'' and inserting ''other Federal advisory committees that advise Federal agencies which engage in related research activities''.

[(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect on March 15, 2005.

[SEC. 7. REMOVAL OF SUNSET PROVISION FROM SAVINGS IN CONSTRUCTION ACT OF 1996.

[Section 14(e) of the Metric Conversion Act of 1975 (15 U.S.C. 205l(e)) is repealed.]

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Department of Energy High-End Computing Revitalization Act of 2004''.

SEC. 2. DEFINITIONS.

In this Act:

(1) CENTER.—The term ''Center'' means a High-End Software Development Center established under section 3(d).

(2) HIGH-END COMPUTING SYSTEM.—The term ''high-end computing system'' means a computing system with performance that substantially exceeds that of systems that are commonly available for advanced scientific and engineering applications.

(3) INSTITUTION OF HIGHER EDUCATION.—The term ''institution of higher education'' has the meaning given the term in section 101(a) of the Higher Education Act of 1965 (20 U.S.C. 1001(a)).

(4) LEADERSHIP SYSTEM.—The term ''Leadership System'' means a high-end computing system that is among the most advanced in the world in terms of performance in solving scientific and engineering problems.

(5) SECRETARY.—The term ''Secretary'' means the Secretary of Energy, acting through the Director of the Office of Science of the Department of Energy.

SEC. 3. DEPARTMENT OF ENERGY HIGH-END COMPUTING RESEARCH AND DEVELOPMENT PROGRAM.

(a) IN GENERAL.—The Secretary shall—

(1) carry out a program of research and development (including development of software and hardware) to advance high-end computing systems; and

(2) develop and deploy high-end computing systems for advanced scientific and engineering applications.

(b) PROGRAM.—The program shall—

(1) support both individual investigators and multidisciplinary teams of investigators;

(2) conduct research in multiple architectures, which may include vector, reconfigurable logic, streaming, processor-in-memory, and multithreading architectures;

(3) conduct research on software for high-end computing systems, including research on algorithms, programming environments, tools, languages, and operating systems for high-end computing systems, in collaboration with architecture development efforts;

(4) provide for sustained access by the research community in the United States to high-end computing systems and to Leadership Systems, including provision of technical support for users of such systems;

(5) support technology transfer to the private sector and others in accordance with applicable law; and

(6) ensure that the high-end computing activities of the Department of Energy are coordinated with relevant activities in industry and with other Federal agencies, including the National Science Foundation, the Defense Advanced Research Projects Agency, the National Nuclear Security Administration, the National Security Agency, the National Institutes of Health, the National Aeronautics and Space Administration, the National Oceanic and Atmospheric Administration, the National Institutes of Standards and Technology, and the Environmental Protection Agency.

(c) LEADERSHIP SYSTEMS FACILITIES.—

(1) IN GENERAL.—As part of the program carried out under this Act, the Secretary shall establish and operate 1 or more Leadership Systems facilities to—

(A) conduct advanced scientific and engineering research and development using Leadership Systems; and

(B) develop potential advancements in high-end computing system hardware and software.

(2) ADMINISTRATION.—In carrying out this subsection, the Secretary shall provide to Leadership Systems, on a competitive, merit-reviewed basis, access to researchers in United States industry, institutions of higher education, national laboratories, and other Federal agencies.

(d) HIGH-END SOFTWARE DEVELOPMENT CENTER.—

(1) IN GENERAL.—As part of the program carried out under this Act, the Secretary shall establish at least 1 High-End Software Development Center.

(2) DUTIES.—A Center shall concentrate efforts to develop, test, maintain, and support optimal algorithms, programming environments, tools, languages, and operating systems for high-end computing systems.

(3) STAFF.—A Center shall include—

(A) a full-time research staff, to create a centralized knowledge base for high-end software development; and

(B) a rotating staff of researchers from other institutions and industry to assist in coordination of research efforts and promote technology transfer to the private sector.

(4) USE OF EXPERTISE.—The Secretary shall use the expertise of a Center to assess research and development in high-end computing system architecture.

(5) LOCATION.—The location of a Center shall be determined by a competitive proposal process administered by the Secretary.

SEC. 4. AUTHORIZATION OF APPROPRIATIONS.

In addition to amounts otherwise made available for high-end computing, there are authorized to be appropriated to the Secretary to carry out this Act—

(1) $50,000,000 for fiscal year 2005;

(2) $55,000,000 for fiscal year 2006; and

(3) $60,000,000 for fiscal year 2007.

SEC. 5. ASTRONOMY AND ASTROPHYSICS ADVISORY COMMITTEE.

(a) AMENDMENTS.—Section 23 of the National Science Foundation Authorization Act of 2002 (42 U.S.C. 1862n–9) is amended—

(1) in subsection (a) and paragraphs (1) and (2) of subsection (b), by striking ''and the National Aeronautics and Space Administration'' and inserting '', the National Aeronautics and Space Administration, and the Department of Energy'';

(2) in subsection (b)(3), by stiking ''Administration, and'' and inserting ''Administration, the Secretary of Energy,'';

(3) in subsection (c)—

(A) in paragraphs (1) and (2), by striking ''5'' and inserting ''4'';

(B) in paragraph (2), by striking ''and'' at the end;

(C) by redesignating paragraph (3) as paragraph (4), and in that paragraph by striking ''3'' and inserting ''2''; and

(D) by inserting after paragraph (2) the following:

''(3) 3 members selected by the Secretary of Energy; and''; and

(4) in subsection (f), by striking ''the advisory bodies of other Federal agencies, such as the Department of Energy, which may engage in related research activities'' and inserting ''other Federal advisory committees that advise Federal agencies that engage in related research activities''.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) take effect on March 15, 2005.

SEC. 6. REMOVAL OF SUNSET PROVISION FROM SAVINGS IN CONSTRUCTION ACT OF 1996.

Section 14 of the Metric Conversion Act of 1975 (15 U.S.C. 205l) is amended by striking subsection (e).

The amendment (No. 4053) was agreed to as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Department of Energy High-End Computing Revitalization Act of 2004''.

SEC. 2. DEFINITIONS.

In this Act:

(1) CENTER.—The term ''Center'' means a High-End Software Development Center established under section 3(d).

(2) HIGH-END COMPUTING SYSTEM.—The term ''high-end computing system'' means a computing system with performance that substantially exceeds that of systems that are commonly available for advanced scientific and engineering applications.

(3) LEADERSHIP SYSTEM.—The term ''Leadership System'' means a high-end computing system that is among the most advanced in the world in terms of performance in solving scientific and engineering problems.

(4) INSTITUTION OF HIGHER EDUCATION.—The term ''institution of higher education'' has the meaning given the term in section 101(a) of the Higher Education Act of 1965 (20 U.S.C. 1001(a)).

(5) SECRETARY.—The term ''Secretary'' means the Secretary of Energy, acting through the Director of the Office of Science of the Department of Energy.

SEC. 3. DEPARTMENT OF ENERGY HIGH-END COMPUTING RESEARCH AND DEVELOPMENT PROGRAM.

(a) IN GENERAL.—The Secretary shall—

(1) carry out a program of research and development (including development of software and hardware) to advance high-end computing systems; and

(2) develop and deploy high-end computing systems for advanced scientific and engineering applications.

(b) PROGRAM.—The program shall—

(1) support both individual investigators and multidisciplinary teams of investigators;

(2) conduct research in multiple architectures, which may include vector, reconfigurable logic, streaming, processor-in-memory, and multithreading architectures;

(3) conduct research on software for high-end computing systems, including research on algorithms, programming environments, tools, languages, and operating systems for high-end computing systems, in collaboration with architecture development efforts;

(4) provide for sustained access by the research community in the United States to high-end computing systems and to Leadership Systems, including provision of technical support for users of such systems;

(5) support technology transfer to the private sector and others in accordance with applicable law; and

(6) ensure that the high-end computing activities of the Department of Energy are coordinated with relevant activities in industry and with other Federal agencies, including the National Science Foundation, the Defense Advanced Research Projects Agency, the National Nuclear Security Administration, the National Security Agency, the National Institutes of Health, the National Aeronautics and Space Administration, the National Oceanic and Atmospheric Administration, the National Institutes of Standards and Technology, and the Environmental Protection Agency.

(c) LEADERSHIP SYSTEMS FACILITIES.—

(1) IN GENERAL.—As part of the program carried out under this Act, the Secretary shall establish and operate 1 or more Leadership Systems facilities to—

(A) conduct advanced scientific and engineering research and development using Leadership Systems; and

(B) develop potential advancements in high-end computing system hardware and software.

(2) ADMINISTRATION.—In carrying out this subsection, the Secretary shall provide to Leadership Systems, on a competitive, merit-reviewed basis, access to researchers in United States industry, institutions of higher education, national laboratories, and other Federal agencies.

(d) HIGH-END SOFTWARE DEVELOPMENT CENTER.—

(1) IN GENERAL.—As part of the program carried out under this Act, the Secretary shall establish at least 1 High-End Software Development Center.

(2) DUTIES.—A Center shall concentrate efforts to develop, test, maintain, and support optimal algorithms, programming environments, tools, languages, and operating systems for high-end computing systems.

(3) PROPOSALS.—In soliciting proposals for the Center, the Secretary shall encourage staffing arrangements that include both permanent staff and a rotating staff of researchers from other institutions and industry to assist in coordination of research efforts and promote technology transfer to the private sector.

(4) USE OF EXPERTISE.—The Secretary shall use the expertise of a Center to assess research and development in high-end computing system architecture.

(5) SELECTION.—The selection of a Center shall be determined by a competitive proposal process administered by the Secretary.

SEC. 4. AUTHORIZATION OF APPROPRIATIONS.

In addition to amounts otherwise made available for high-end computing, there are authorized to be appropriated to the Secretary to carry out this Act—

(1) $50,000,000 for fiscal year 2005;

(2) $55,000,000 for fiscal year 2006; and

(3) $60,000,000 for fiscal year 2007.

SEC. 5. ASTRONOMY AND ASTROPHYSICS ADVISORY COMMITTEE.

(a) AMENDMENTS.—Section 23 of the National Science Foundation Authorization Act of 2002 (42 U.S.C. 1862n–9) is amended—

(1) in subsection (a) and paragraphs (1) and (2) of subsection (b), by striking ''and the National Aeronautics and Space Administration'' and inserting '', the National Aeronautics and Space Administration, and the Department of Energy'';

(2) in subsection (b)(3), by striking ''Administration, and'' and inserting ''Administration, the Secretary of Energy, '';

(3) in subsection (c)—

(A) in paragraphs (1) and (2), by striking ''5'' and inserting ''4'';

(B) in paragraph (2), by striking ''and'' at the end;

(C) by redesignating paragraph (3) as paragraph (4), and in that paragraph by striking ''3'' and inserting ''2''; and

(D) by inserting after paragraph (2) the following:

''(3) 3 members selected by the Secretary of Energy; and

(4) in subsection (f), by striking ''the advisory bodies of other Federal agencies, such as the Department of Energy, which may engage in related research activities'' and inserting ''other Federal advisory committees that advise Federal agencies that engage in related research activities''.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) take effect on March 15, 2005.

SEC. 6. REMOVAL OF SUNSET PROVISION FROM SAVINGS IN CONSTRUCTION ACT OF 1996.

Section 14 of the Metric Conversion Act of 1975 (15 U.S.C. 205*l*) is amended by striking subsection (e).

The committee amendment in the nature of a substitute, as amended, was agreed to.

The bill (H.R. 4516), as amended, was read the third time and passed.

BOUNDARY REVISION OF THE CHICKASAW NATIONAL RECREATION AREA

The bill (H.R. 4066) to provide for the conveyance of certain land to the United States and to revise the boundary of Chickasaw National Recreation Area, Oklahoma, and for other purposes was considered, ordered to a third reading, read the third time, and passed.

H.R. 4066

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 ''Chickasaw National Recreation Area Land Exchange Act of 2004''.

SEC. 2. FINDINGS AND PURPOSE.

(a) FINDINGS.—Congress finds the following:

(1) By provision 64 of the agreement between the United States and the Choctaws and Chickasaws dated March 21, 1902 (32 Stat. 641, 655–56), approved July 1, 1902, 640 acres of property were ceded to the United States for the purpose of creating Sulphur Springs Reservation, later known as Platt National Park, to protect water and other resources and provide public access.

(2) In 1976, Platt National Park, the Arbuckle Recreation Area, and additional lands were combined to create Chickasaw National Recreation Area to protect and expand water and other resources as well as to memorialize the history and culture of the Chickasaw Nation.

(3) More recently, the Chickasaw Nation has expressed interest in establishing a cultural center inside or adjacent to the park.

(4) The Chickasaw National Recreation Area's Final Amendment to the General Management Plan (1994) found that the best location for a proposed Chickasaw Nation Cultural Center is within the Recreation Area's existing boundary and that the selected cultural center site should be conveyed to the Chickasaw Nation in exchange for land of equal value.

(5) The land selected to be conveyed to the Chickasaw Nation holds significant historical and cultural connections to the people of the Chickasaw Nation.

(6) The City of Sulphur, Oklahoma, is a key partner in this land exchange through its donation of land to the Chickasaw Nation for the purpose of exchange with the United States.

(7) The City of Sulphur, Oklahoma, has conveyed fee simple title to the non-Federal land described as Tract 102–26 to the Chickasaw Nation by Warranty Deed.

(8) The National Park Service, the Chickasaw Nation, and the City of Sulphur, Oklahoma, have signed a preliminary agreement to effect a land exchange for the purpose of the construction of a cultural center.

(b) PURPOSE.—The purpose of this Act is to authorize, direct, facilitate, and expedite the land conveyance in accordance with the terms and conditions of this Act.

SEC. 3. DEFINITIONS.

For the purposes of this Act, the following definitions apply:

(1) FEDERAL LAND.—The term ''Federal land'' means the Chickasaw National Recreational Area lands and interests therein, identified as Tract 102–25 on the Map.

(2) NON-FEDERAL LAND.—The term ''non-Federal land'' means the lands and interests therein, formerly owned by the City of Sulphur, Oklahoma, and currently owned by the Chickasaw Nation, located adjacent to the existing boundary of Chickasaw National Recreation Area and identified as Tract 102–26 on the Map.

(3) MAP.—The term ''Map'' means the map entitled ''Proposed Land Exchange and Boundary Revision, Chickasaw National Recreation Area'', dated September 8, 2003, and numbered 107/800035a.

(4) SECRETARY.—The term ''Secretary'' means the Secretary of the Interior.

SEC. 4. CHICKASAW NATIONAL RECREATION AREA LAND CONVEYANCE.

(a) LAND CONVEYANCE.—Not later then 6 months after the Chickasaw Nation conveys all right, title, and interest in and to the non-Federal land to the United States, the Secretary shall convey all right, title, and interest in and to the Federal land to the Chickasaw Nation.

(b) VALUATION OF LAND TO BE CONVEYED.—The fair market values of the Federal land and non-Federal land shall be determined by an appraisal acceptable to the Secretary and the Chickasaw Nation. The appraisal shall conform with the Federal appraisal standards, as defined in the Uniform Appraisal Standards for Federal Land Acquisitions developed by the Interagency Land Acquisition Conference, 1992, and any amendments to these standards.

(c) EQUALIZATION OF VALUES.—If the fair market values of the Federal land and non-Federal land are not equal, the values may be equalized by the payment of a cash equalization payment by the Secretary or the Chickasaw Nation, as appropriate.

(d) CONDITIONS.—

(1) IN GENERAL.—Notwithstanding subsection (a), the conveyance of the non-Federal land authorized under subsection (a) shall not take place until the completion of all items included in the Preliminary Exchange Agreement among the City of Sulphur, the Chickasaw Nation, and the National Park Service, executed on July 16, 2002, except as provided in paragraph (2).

(2) EXCEPTION.—The item included in the Preliminary Exchange Agreement among the City of Sulphur, the Chickasaw Nation, and the National Park Service, executed on July 16, 2002, providing for the Federal land to be taken into trust for the benefit of the Chickasaw Nation shall not apply.

(e) ADMINISTRATION OF ACQUIRED LAND.—Upon completion of the land exchange authorized under subsection (a), the Secretary—

(1) shall revise the boundary of Chickasaw National Recreation Area to reflect that exchange; and

(2) shall administer the land acquired by the United States in accordance with applicable laws and regulations.

Mr. FRIST. Mr. President, I ask unanimous consent that the Senate proceed to the en bloc consideration of H.R. 3391, H.R. 3479, H.R. 4593, H.R. 4827, H.R. 1630, and H.R. 4579 which are at the desk.

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

Mr. FRIST. I ask unanimous consent that the amendments at the desk be agreed to, the bills, as amended, if amended, be read a third time and passed, the motions to reconsider be laid upon the table en bloc, and any statements relating to the bills be printed in the RECORD.

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

PROVO RIVER PROJECT TRANSFER ACT

The bill (H.R. 3391) to authorize the Secretary of the Interior to convey certain lands and facilities of the Provo River Project, was considered, ordered to a third reading, read the third time, and passed.

BROWN TREE SNAKE CONTROL AND ERADICATION ACT OF 2004

The bill (H.R. 3479) to provide for the control and eradication of the brown tree snake on the island of Guam and the prevention of the introduction of the brown tree snake to other areas of the United States, and for other purposes, was considered, ordered to a third reading, read the third time, and passed.

LINCOLN COUNTY CONSERVATION, RECREATION, AND DEVELOPMENT ACT OF 2004

The Senate proceeded to consider the bill (H.R. 4593) to establish wilderness areas, promote conservation, improve public land, and provide for the high quality development in Lincoln County, Nevada, and for other purposes.

The amendment (No. 4054) was agreed to.

(The amendment is printed in today's RECORD under ''Text of Amendments.''

The bill (H.R. 4054), as amended, was read the third time and passed.

McINNIS CANYONS NATIONAL CONSERVATION AREA

The bill (H.R. 4827) to amend the Colorado Canyons National Conservation Area and Black Ridge Canyons Wilderness Act of 2000 to rename the Colorado Canyons National Conservation Area as the McInnis Canyons National Conservation Area, was considered, ordered to a third reading, read the third time, and passed.

PETRIFIED FOREST NATIONAL PART EXPANSION ACT OF 2003

The Senate proceeded to consider the bill (H.R. 1630) to revise the boundary of the Petrified Forest National Park in the State of Arizona, and for other purposes.

The amendment (No. 4055) was agreed to, as follows:

On page 2, line 9, strike ''June'' and insert ''July''.

The bill (H.R. 1630), as amended, was read the third time and passed.

TRUMAN FARM HOUSE EXPANSION ACT

The bill (H.R. 4579) to modify the boundary of the Harry S. Truman National Historic Site in the State of Missouri, and for other purposes, was considered, ordered to a third reading, read the third time, and passed.

LEWIS AND CLARK NATIONAL HISTORICAL PARK

ALASKA LAND TRANSFER ACCELERATION ACT OF 2003

WILSON'S CREEK NATIONAL BATTLEFIELD IN MISSOURI

ORGANIC ACT OF GUAM AMENDMENT

PONCE DE LEON DISCOVERY OF FLORIDA QUINCENTENNIAL ACT

UPPER CONNECTICUT RIVER PARTNERSHIP ACT

Mr. FRIST. Mr. President, I ask unanimous consent that the Energy Committee be discharged from the following bills, en bloc: H.R. 3819, S. 1466, H.R. 4481, H.R. 2400, S. 2656, and S. 1433, and the Senate proceed to their immediate consideration, en bloc.

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

There being no objection, the Senate proceeded to consider the bills, en bloc.

Mr. FRIST. Mr. President, I ask unanimous consent that the amendments at the desk be agreed to, the bills, as amended, be read a third time and passed, and the motions to reconsider be laid upon the table, en bloc, and that any statements related to the bills be printed in the RECORD.

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

The bill (H.R. 3819), Lewis and Clark National Historical Park Designation Act of 2004, was read the third time and passed.

The Senate proceeded to consider the bill (S. 1466) to facilitate the transfer of

land in the State of Alaska, and for other purposes.

The amendment (No. 4056) was agreed to.

(The amendment is printed in today's RECORD under ''Text of Amendments.'')

The bill (S. 1466), as amended, was read the third time and passed.

(The bill will be printed in a future edition of the RECORD.)

The bill (H.R. 4481), Wilson's Creek National Battlefield Boundary Adjustment Act of 2004, was read the third time and passed.

The bill (H.R. 2400), To amend the Organic Act of Guam for the purposes of clarifying the local judicial structure of Guam was read the third time and passed.

The Senate proceeded to consider the bill (S. 2556) to establish a National Commission on the Quincentennial of the discovery of Florida by Ponce de Leon.

The amendment (No. 4057) was agreed to.

(The amendment is printed in Today's RECORD under ''Text of Amendments.'')

The bill (S. 2556), as amended, was read the third time and passed.

(The bill will be printed in a future edition of the RECORD.)

The Senate proceeded to consider the bill (S. 1433) to authorize the Secretary of the Interior to provide assistance in implementing cultural heritage, conservation, and recreational activities in the Connecticut River watershed of the States of New Hampshire and Vermont.

The bill (S. 1433) was read the third time and passed, as follows:

S. 1433

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 ''Upper Connecticut River Partnership Act''.

SEC. 2. FINDINGS AND PURPOSE.

(a) FINDINGS.—Congress finds that—

(1) the upper Connecticut River watershed in the States of New Hampshire and Vermont is a scenic region of historic villages located in a working landscape of farms, forests, and the mountainous headwaters and broad fertile floodplains of New England's longest river, the Connecticut River;

(2) the River provides outstanding fish and wildlife habitat, recreation, and hydropower generation for the New England region;

(3) the upper Connecticut River watershed has been recognized by Congress as part of the Silvio O. Conte National Fish and Wildlife Refuge, established by the Silvio O. Conte National Fish and Wildlife Refuge Act (16 U.S.C. 668dd note; Public Law 102–212);

(4) the demonstrated interest in stewardship of the River by the citizens living in the watershed led to the Presidential designation of the River as 1 of 14 American Heritage Rivers on July 30, 1998;

(5) the River is home to the bistate Connecticut River Scenic Byway, which will foster heritage tourism in the region;

(6) each of the legislatures of the States of Vermont and New Hampshire has established a commission for the Connecticut River watershed, and the 2 commissions, known collectively as the ''Connecticut River Joint Commissions''—

(A) have worked together since 1989; and

(B) serve as the focal point for cooperation between Federal agencies, States, communities, and citizens;

(7) in 1997, as directed by the legislatures, the Connecticut River Joint Commissions, with the substantial involvement of 5 bistate local river subcommittees appointed to represent riverfront towns, produced the 6-volume Connecticut River Corridor Management Plan, to be used as a blueprint in educating agencies, communities, and the public in how to be good neighbors to a great river;

(8) this year, by Joint Legislative Resolution, the legislatures have requested that Congress provide for continuation of cooperative partnerships and support for the Connecticut River Joint Commissions from the New England Federal Partners for Natural Resources, a consortium of Federal agencies, in carrying out recommendations of the Connecticut River Corridor Management Plan;

(9) this Act effectuates certain recommendations of the Connecticut River Corridor Management Plan that are most appropriately directed by the States through the Connecticut River Joint Commissions, with assistance from the National Park Service and United States Fish and Wildlife Service; and

(10) where implementation of those recommendations involves partnership with local communities and organizations, support for the partnership should be provided by the Secretary.

(b) PURPOSE.—The purpose of this Act is to authorize the Secretary to provide to the States of New Hampshire and Vermont (including communities in those States), through the Connecticut River Joint Commissions, technical and financial assistance for management of the River.

SEC. 3. DEFINITIONS.

In this Act:

(1) SECRETARY.—The term ''Secretary'' means the Secretary of the Interior.

(2) STATE.—The term ''State'' means—

(A) the State of New Hampshire; or

(B) the State of Vermont.

SEC. 4. CONNECTICUT RIVER GRANTS AND TECHNICAL ASSISTANCE PROGRAM.

(a) IN GENERAL.—The Secretary shall establish a Connecticut River Grants and Technical Assistance Program to provide grants and technical assistance to State and local governments, nonprofit organizations, and the private sector to carry out projects for the conservation, restoration, and interpretation of historic, cultural, recreational, and natural resources in the Connecticut River watershed.

(b) CRITERIA.—The Secretary, in consultation with the Connecticut River Joint Commissions, shall develop criteria for determining the eligibility of applicants for, and reviewing and prioritizing applications for, grants or technical assistance under the program.

(c) COST-SHARING.—

(1) FEDERAL SHARE.—The Federal share of the cost of carrying out a grant project under subsection (a) shall not exceed 75 percent.

(2) NON-FEDERAL SHARE.—The non-Federal share of the cost of a project may be provided in the form of in-kind contributions of services or materials.

SEC. 5. AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated to carry out this Act $1,000,000 for each fiscal year.

WORLD YEAR OF PHYSICS

Mr. FRIST. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 742, S. Con. Res. 121.

The PRESIDING OFFICER. The clerk will state the concurrent resolution by title.

The legislative clerk read as follows:

A concurrent resolution (S. Con. Res. 121) supporting the goals and ideals of the World Year of Physics.

There being no objection, the Senate proceeded to consider the concurrent resolution.

Mr. FRIST. Mr. President, I ask unanimous consent that the concurrent resolution be agreed to, the preamble be agreed to, the motion to reconsider be laid upon the table, and that any statements relating to the measure be printed in the RECORD.

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

The concurrent resolution (S. Con. Res. 121) was agreed to.

The preamble was agreed to.

The concurrent resolution, with its preamble, reads as follows:

S. CON. RES. 121

Whereas throughout history, physics has contributed to knowledge, civilization, and culture around the world;

Whereas physics research has been and continues to be a driving force for scientific, technological, and economic development;

Whereas many emerging fields in science and technology, such as nanoscience, information technology, and biotechnology, are substantially based on, and derive many tools from, fundamental discoveries in physics and physics applications;

Whereas physics will continue to play a vital role in addressing many 21st-century challenges relating to sustainable development, including environmental conservation, clean sources of energy, public health, and security;

Whereas Albert Einstein is a widely recognized scientific figure who contributed enormously to the development of physics, beginning in 1905 with Einstein's groundbreaking papers on the photoelectric effect, the size of molecules, Brownian motion, and the theory of relativity that led to Einstein's most famous equation, $E = mc^2$;

Whereas 2005 will be the 100th anniversary of the publication of those groundbreaking papers;

Whereas the General Assembly of the International Union of Pure and Applied Physics unanimously approved the proposition designating 2005 as the World Year of Physics; and

Whereas the Department of Energy is the leading source of Federal support for academic physics research, accounting for a majority of Federal funding for physics: Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), That Congress—

(1) supports the goals and ideals of the World Year of Physics, as designated by the General Assembly of the International Union of Pure and Applied Physics;

(2) encourages the people of the United States to observe the World Year of Physics as a special occasion for giving impetus to—

(A) education and research in physics; and

(B) the public's understanding of physics;

(3) calls on the Secretary of Energy to lead and coordinate Federal activities to commemorate the World Year of Physics;

(4) encourages the Secretary, all science-related organizations, the private sector, and the media to highlight and give enhanced recognition to—

(A) the role of physics in social, cultural, and economic development; and

(B) the positive impact and contributions of physics to society; and

(5) encourages the Secretary and all people involved in physics education and research to take additional steps (including strengthening existing and emerging fields of physics research and promoting the understanding of physics) to ensure that—

(A) support for physics continues; and

(B) physics studies at all levels continue to attract an adequate number of students.

HIBBEN CENTER ACT

Mr. FRIST. Mr. President, I ask the Chair lay before the Senate a message from the House of Representatives on the bill (S. 643) to authorize the Secretary of the Interior, in cooperation with the University of New Mexico, to construct and occupy a portion of the Hibben Center for Archaeological Research at the University of New Mexico.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

S. 643

Resolved, That the bill from the Senate (S. 643) entitled ''An Act to authorize the Secretary of the Interior, in cooperation with the University of New Mexico, to construct and occupy a portion of the Hibben Center for Archaeological Research at the University of New Mexico, and for other purposes'', do pass with the following amendment:

Strike out all after the enacting clause and insert:

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Hibben Center Act''.

SEC. 2. LEASE AGREEMENT.

(a) AUTHORIZATION.—The Secretary of the Interior may enter into an agreement with the University of New Mexico to lease space in the Hibben Center for Archaeological Research at the University of New Mexico for research on, and curation of, the archaeological research collections of the National Park Service relating to the Chaco Culture National Historical Park and Aztec Ruins National Monument.

(b) TERM; RENT.—The lease shall provide for a term not exceeding 40 years and a nominal annual lease payment.

(c) IMPROVEMENTS.—The lease shall permit the Secretary to make improvements and install furnishings and fixtures related to the use and curation of the collections.

SEC. 3. GRANT.

Upon execution of the lease, the Secretary may contribute to the University of New Mexico:

(1) up to 37 percent of the cost of construction of the Hibben Center, not to exceed $1,750,000; and

(2) the cost of improvements, not to exceed $2,488,000.

SEC. 4. COOPERATIVE AGREEMENT.

The Secretary may enter into cooperative agreements with the University of New Mexico, Federal agencies, and Indian tribes for the curation of and conduct of research on artifacts, and to encourage collaborative management of the Chacoan archaeological artifacts associated with northwestern New Mexico.

SEC. 5. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to the Secretary such sums as may be necessary for the purposes of this Act.

NOXIOUS WEED CONTROL AND ERADICATION ACT OF 2004

Mr. FRIST. Mr. President, I ask the Chair lay before the Senate a message from the House of Representatives on the bill (S. 144) to require the Secretary of the Interior to establish a program to provide assistance through States to eligible weed management entities to control or eradicate harmful, nonnative weeds on public and private land.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

S. 144

Resolved, That the bill from the Senate (S. 144) entitled ''An Act to require the Secretary of the Interior to establish a program to provide assistance through States to eligible weed management entities to control or eradicate harmful, nonnative weeds on public and private land'', do pass with the following amendments:

Strike out all after the enacting clause and insert:

SECTION 1. NOXIOUS WEED CONTROL AND ERADICATION.

The Plant Protection Act (7 U.S.C. 7701 et seq.) is amended by adding at the end the following new subtitle:

''Subtitle E—Noxious Weed Control and Eradication

''SEC. 451. SHORT TITLE.

''This subtitle may be cited as the 'Noxious Weed Control and Eradication Act of 2004'.

''SEC. 452. DEFINITIONS.

''In this subtitle:

''(1) INDIAN TRIBE.—The term 'Indian Tribe' has the meaning given that term in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b).

''(2) WEED MANAGEMENT ENTITY.—The term 'weed management entity' means an entity that—

''(A) is recognized by the State in which it is established;

''(B) is established for the purpose of or has demonstrable expertise and significant experience in controlling or eradicating noxious weeds and increasing public knowledge and education concerning the need to control or eradicate noxious weeds;

''(C) may be multijurisdictional and multidisciplinary in nature;

''(D) may include representatives from Federal, State, local, or, where applicable, Indian Tribe governments, private organizations, individuals, and State-recognized conservation districts or State-recognized weed management districts; and

''(E) has existing authority to perform land management activities on Federal land if the proposed project or activity is on Federal lands.

''(3) FEDERAL LANDS.—The term 'Federal lands' means those lands owned and managed by the United States Forest Service or the Bureau of Land Management.

''SEC. 453. ESTABLISHMENT OF PROGRAM.

''(a) IN GENERAL.—The Secretary shall establish a program to provide financial and technical assistance to control or eradicate noxious weeds.

''(b) GRANTS.—Subject to the availability of appropriations under section 457(a), the Secretary shall make grants under section 454 to weed management entities for the control or eradication of noxious weeds.

''(c) AGREEMENTS.—Subject to the availability of appropriations under section 457(b), the Secretary shall enter into agreements under section 455 with weed management entities to provide financial and technical assistance for the control or eradication of noxious weeds.

''SEC. 454. GRANTS TO WEED MANAGEMENT ENTITIES.

''(a) CONSULTATION AND CONSENT.—In carrying out a grant under this subtitle, the weed management entity and the Secretary shall—

''(1) if the activities funded under the grant will take place on Federal land, consult with the heads of the Federal agencies having jurisdiction over the land; or

''(2) obtain the written consent of the non-Federal landowner.

''(b) GRANT CONSIDERATIONS.—In determining the amount of a grant to a weed management entity, the Secretary shall consider—

''(1) the severity or potential severity of the noxious weed problem;

''(2) the extent to which the Federal funds will be used to leverage non-Federal funds to address the noxious weed problem;

''(3) the extent to which the weed management entity has made progress in addressing the noxious weeds problem; and

''(4) other factors that the Secretary determines to be relevant.

''(c) USE OF GRANT FUNDS; COST SHARES.—

''(1) USE OF GRANTS.—A weed management entity that receives a grant under subsection (a) shall use the grant funds to carry out a project authorized by subsection (d) for the control or eradication of a noxious weed.

''(2) COST SHARES.—

''(A) FEDERAL COST SHARE.—The Federal share of the cost of carrying out an authorized project under this section exclusively on non-Federal land shall not exceed 50 percent.

''(B) FORM OF NON-FEDERAL COST SHARE.—The non-Federal share of the cost of carrying out an authorized project under this section may be provided in cash or in kind.

''(d) AUTHORIZED PROJECTS.—Projects funded by grants under this section include the following:

''(1) Education, inventories and mapping, management, monitoring, methods development, and other capacity building activities, including the payment of the cost of personnel and equipment that promote control or eradication of noxious weeds.

''(2) Other activities to control or eradicate noxious weeds or promote control or eradication of noxious weeds.

''(e) APPLICATION.—To be eligible to receive assistance under this section, a weed management entity shall prepare and submit to the Secretary an application containing such information as the Secretary shall by regulation require.

''(f) SELECTION OF PROJECTS.—Projects funded under this section shall be selected by the Secretary on a competitive basis, taking into consideration the following:

''(1) The severity of the noxious weed problem or potential problem addressed by the project.

''(2) The likelihood that the project will prevent or resolve the problem, or increase knowledge about resolving similar problems.

''(3) The extent to which the Federal funds will leverage non-Federal funds to address the noxious weed problem addressed by the project.

''(4) The extent to which the program will improve the overall capacity of the United States to address noxious weed control and management.

''(5) The extent to which the weed management entity has made progress in addressing noxious weed problems.

''(6) The extent to which the project will provide a comprehensive approach to the control or eradication of noxious weeds.

''(7) The extent to which the project will reduce the total population of noxious weeds.

''(8) The extent to which the project promotes cooperation and participation between States that have common interests in controlling and eradicating noxious weeds.

''(9) Other factors that the Secretary determines to be relevant.

''(g) REGIONAL, STATE, AND LOCAL INVOLVEMENT.—In determining which projects receive

funding under this section, the Secretary shall, to the maximum extent practicable—

''(1) rely on technical and merit reviews provided by regional, State, or local weed management experts; and

''(2) give priority to projects that maximize the involvement of State, local and, where applicable, Indian Tribe governments.

''(h) SPECIAL CONSIDERATION.—The Secretary shall give special consideration to States with approved weed management entities established by Indian Tribes and may provide an additional allocation to a State to meet the particular needs and projects that the weed management entity plans to address.

''SEC. 455. AGREEMENTS.

''(a) CONSULTATION AND CONSENT.—In carrying out an agreement under this section, the Secretary shall—

''(1) if the activities funded under the agreement will take place on Federal land, consult with the heads of the Federal agencies having jurisdiction over the land; or

''(2) obtain the written consent of the non-Federal landowner.

''(b) APPLICATION OF OTHER LAWS.—The Secretary may enter into agreements under this section with weed management entities notwithstanding sections 6301 through 6309 of title 31, United States Code, and other laws relating to the procurement of goods and services for the Federal Government.

''(c) ELIGIBLE ACTIVITIES.—Activities carried out under an agreement under this section may include the following:

''(1) Education, inventories and mapping, management, monitoring, methods development, and other capacity building activities, including the payment of the cost of personnel and equipment that promote control or eradication of noxious weeds.

''(2) Other activities to control or eradicate noxious weeds.

''(d) SELECTION OF ACTIVITIES.—Activities funded under this section shall be selected by the Secretary taking into consideration the following:

''(1) The severity of the noxious weeds problem or potential problem addressed by the activities.

''(2) The likelihood that the activity will prevent or resolve the problem, or increase knowledge about resolving similar problems.

''(3) The extent to which the activity will provide a comprehensive approach to the control or eradication of noxious weeds.

''(4) The extent to which the program will improve the overall capacity of the United States to address noxious weed control and management.

''(5) The extent to which the project promotes cooperation and participation between States that have common interests in controlling and eradicating noxious weeds.

''(6) Other factors that the Secretary determines to be relevant.

''(e) REGIONAL, STATE, AND LOCAL INVOLVEMENT.—In determining which activities receive funding under this section, the Secretary shall, to the maximum extent practicable—

''(1) rely on technical and merit reviews provided by regional, State, or local weed management experts; and

''(2) give priority to activities that maximize the involvement of State, local, and, where applicable, representatives of Indian Tribe governments.

''(f) RAPID RESPONSE PROGRAM.—At the request of the Governor of a State, the Secretary may enter into a cooperative agreement with a weed management entity in that State to enable rapid response to outbreaks of noxious weeds at a stage which rapid eradication and control is possible and to ensure eradication or immediate control of the noxious weeds if—

''(1) there is a demonstrated need for the assistance;

''(2) the noxious weed is considered to be a significant threat to native fish, wildlife, or their habitats, as determined by the Secretary;

''(3) the economic impact of delaying action is considered by the Secretary to be substantial; and

''(4) the proposed response to such threat—

''(A) is technically feasible;

''(B) economically responsible; and

''(C) minimizes adverse impacts to the structure and function of an ecosystem and adverse effects on nontarget species and ecosystems.

''SEC. 456. RELATIONSHIP TO OTHER PROGRAMS.

''Funds under this Act (other than those made available for section 455(f)) are intended to supplement, not replace, assistance available to weed management entities, areas, and districts for control or eradication of noxious weeds on Federal lands and non-Federal lands. The provision of funds to a weed management entity under this Act (other than those made available for section 455(f)) shall have no effect on the amount of any payment received by a county from the Federal Government under chapter 69 of title 31, United States Code.

''SEC. 457. AUTHORIZATION OF APPROPRIATIONS.

''(a) GRANTS.—To carry out section 454, there are authorized to be appropriated to the Secretary $7,500,000 for each of fiscal years 2005 through 2009, of which not more than 5 percent of the funds made available for a fiscal year may be used by the Secretary for administrative costs.

''(b) AGREEMENTS.—To carry out section 455 of this subtitle, there are authorized to be appropriated to the Secretary $7,500,000 for each of fiscal years 2005 through 2009, of which not more than 5 percent of the funds made available for a fiscal year may be used by the Secretary for administrative costs of Federal agencies.''.

SEC. 2. TECHNICAL AMENDMENT.

The table of sections in section 1(b) of the Agricultural Risk Protection Act of 2000 is amended by inserting after the item relating to section 442 the following:

''Subtitle E—Noxious Weed Control and Eradication

''Sec. 451. Short title.
''Sec. 452. Definitions.
''Sec. 453. Establishment of program.
''Sec. 454. Grants to weed management entities.
''Sec. 455. Agreements.
''Sec. 456. Relationship to other programs.
''Sec. 457. Authorization of Appropriations.''.

Amend the title so as to read ''An Act to require the Secretary of Agriculture to establish a program to provide assistance to eligible weed management entities to control or eradicate noxious weeds on public and private land.''

Mr. FRIST. Mr. President, I ask unanimous consent that the Senate concur in the House amendment to both bills, and the motions to reconsider be laid upon the table, en bloc, and that any statements be printed in the RECORD.

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

ORDERS FOR MONDAY, OCTOBER 11, 2004

Mr. FRIST. I ask unanimous consent that when the Senate completes its business today, it adjourn until 10 a.m. on Monday, October 11. I further ask that following the prayer and pledge, the morning hour be deemed expired, the Journal of proceedings be approved to date, the time for the two leaders be reserved, and the Senate resume consideration of the conference report to accompany H.R. 4520, the FSC/ETI JOBS bill; and the time until 12 be divided as follows: Senator BOXER, 15 minutes; Senator LANDRIEU, 30 minutes; Senator BAUCUS or his designee, 15 minutes; Senator GRASSLEY or his designee, 60 minutes.

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

Mr. TALENT. I was busy making notes. If I could ask the majority leader, would that include a few minutes for me to do morning business?

Mr. FRIST. Through the Chair, that would be for tonight?

Mr. TALENT. Yes.

Mr. FRIST. I will do that shortly.

PROGRAM

Mr. FRIST. Tomorrow, the Senate will resume consideration of the FSC/ETI JOBS conference report. Under the previous order, at 12 we will proceed to a vote on adoption of that conference report. That will be a rollcall vote. Following that vote, the order provides for us to dispose of the Military Construction appropriations bill and the Homeland Security appropriations bill and a number of other housekeeping measures.

As we indicated earlier, those will be completed without rollcall votes. Therefore, for scheduling purposes we will have one rollcall vote at 12, and that should conclude our voting. Again, I thank Members for their participation over this weekend.

We had a very full day yesterday and a very, very full day today. I do appreciate the cooperation of everyone. It was a real inconvenience to people's schedules, but it has allowed us to reach conclusion at a much earlier time than we would otherwise.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. I mentioned off the microphones today to the two leaders, an hour or so ago, we are here on a Sunday and our dear friend, the senior Senator from West Virginia, Mr. BYRD, talked about the Sabbath and we were all so impressed with his remarks, but I say that if there ever were a time legislatively when the ox was in the mire, it was this weekend. But for our being here as a result of the work of the two leaders, Senator FRIST and Senator DASCHLE, we would not have completed the people's business.

We basically have done that tonight. Tomorrow we come in for some formalities: the FSC bill; cloture was invoked today and it will pass tomorrow and that is our only recorded vote. So I want the RECORD to reflect that Senators DASCHLE and FRIST are the two leaders for a good reason. It is very hard to get where we are, and we all have apologized on a number of occasions for having to come in on Sunday. It is a rare occasion we do that. But I repeat, the ox was in the mire. We had to do that. The ox is out of the mire,

and whether we do that on Sunday or Monday, I believe that is the appropriate thing to do.

I know the Chair will join with me in saying, these people here are glassy-eyed. They have worked so long and so hard. The Capitol Police, the official reporters, the enrolling clerks, the Parliamentarians, everyone here has worked so hard. Our staff has worked tireless hours. We are the ones who are here and people see us, but they see mere shells of what we would be but for their great work. They protect us. They cover for us. The mistakes we make, they find them and come back and correct legislation. So I want everyone who is here to know how much we appreciate what they do. They get so little attention. It is all of us who get the attention and we are the ones who depend on them so much. I know the majority leader joins me in this.

The PRESIDING OFFICER. The majority leader.

Mr. FRIST. I do again want to emphasize what the distinguished assistant minority leader has said. What the American people see and what our colleagues see on the floor is a tiny portion of what is going on, whether it is the pages, law enforcement, Capitol Police, and the hundreds of staff people who are here to make this operation work, from early this morning until late tonight, and they will actually be here well after we close down. So we do want to express our appreciation, especially on this weekend when it is not totally unprecedented, but it is very unusual.

ORDER FOR ADJOURNMENT

Mr. FRIST. Mr. President, finally, if there is no further business to come before the Senate, I ask unanimous consent that the Senate stand in adjournment under the previous order, following up to 20 minutes to be used in morning business by our colleague from the great State of Missouri.

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

The Senator from Missouri.

TRUTH BEHIND OVERTIME: IT HELPS WORKERS

Mr. TALENT. Mr. President, I am very grateful to the majority leader and the Democratic whip for allowing me this time. I am sorry to run in breathless at the end of the evening to ask for it. I thought I would have an opportunity, perhaps in the wee hours of the morning, to make this statement. I think it will be evident when I get into it why I want to do it now. I will explain that also.

Let me say I agree completely with the statement of the Senator from Nevada regarding the staff. I have presided, myself, during this weekend, on several occasions. I am grateful to the staff for coming in and sorry to keep them a few minutes later than they would otherwise have to stay. I just want all the staff to know that, in compensation to them as a small token, if they would like to come to my desk after we adjourn, I have plenty of Russell Stover candy, pecan rolls and almond rolls—and low carb candy also, I say to the majority leader. I am more than happy to share it with all the staff who worked so hard this weekend.

I want to talk a little bit about overtime. I have not talked about overtime on the floor of the Senate despite the fact that there has been a lot of controversy over it. There are a lot of reasons I have not to this point. I have had other priorities. But the overtime regulations that went into effect about 6 weeks ago are actually, of course, having an impact in the United States. In other words, they are now the law. People are having to comply with them. Employers are having to comply with them.

So we have reached a new stage in the controversy over those rules because we don't have to speculate anymore what their impact is going to be. We know what their impact is because they have become law. What we are finding is that these overtime regulations, as many of us thought and as the Secretary of Labor said over and over again, are working the most significant enlargement of overtime pay, the most significant increase of overtime coverage in the history of the overtime law, at least since 1938.

I wanted to say this on the floor of the Senate before we left because I think it is owing, in particular, to the Secretary to say it. She has been criticized by many outside of this body and some in this body. They have said these overtime regulations the Department has issued would restrict overtime for people. It is not working that way, and there are a lot of us who knew it wouldn't work that way, which is why we always voted to allow that process to move forward.

So I want to say this evening, and I am going to go through the reasons why and then talk about what exactly is happening out there in my 20 minutes, but I want to repeat, these overtime regulations, far from restricting overtime coverage, are working the most significant enlargement in overtime protection since 1938.

I want to explain now why those of us who have some familiarity with this field of law always thought that would be the case. I read these proposed regulations when they came out about a year ago. I looked at them and said to myself, as a person who used to practice labor and employment law, my gosh, there are going to be a lot more people getting overtime under these regulations than have gotten it before. Let me explain why.

This is a rather arcane field of law, but it is possible to understand it. You have to start from the assumption that unless the law provides otherwise, every employee in the country is entitled to overtime if they work more than 40 hours a week. You are entitled to overtime unless the law exempts you from overtime, so the bigger the exemption, the less the overtime. When we talk about exemptions expanding, we are talking about overtime restricting, and it is important to keep that in mind.

We start from the proposition that all employees are covered by overtime. The law exempts management employees. It has always been an aspect of the law that if you are in management, if you are one of the people who run the company, you are not entitled to mandatory overtime.

So how does the law define management? First of all, to be a management employee you have to be salaried. If you are paid by the hour, you get overtime. It doesn't matter what else your job may entail, you get overtime. So you have to be salaried.

Second, you have to be salaried above a certain level. This is very significant because it has changed. Under the old regulations, before the new regulations were issued and took effect, under the old regulations, if your salary was below about $13,000 a year you automatically got overtime. You could not be considered management unless your salary was at least $13,000 a year. That wasn't much protection because just about everybody in the country who worked full time and got a salary earned more than $13,000 a year. But the new regulations raised that threshold to $23,600. What the law is now, if you get paid a salary of less than $23,600, you get overtime protection. You get mandatory overtime regardless of what the rest of your job may entail.

When I saw that, I knew immediately that there were going to be tens and tens of thousands of people who had been exempt, whose overtime had been denied them legally under the old regulations, who would now get it automatically. I am talking about people who work as assistant managers of restaurants or in some cases you might be a line leader in a plant or you might have some other job which looks like it may be management so you got exempted under the old regulations. But where you were not paid $23,600, automatically those people come under protection.

It is not enough to be paid a salary above $23,600 or above the threshold, whatever it is, to be considered management, and it never has been. The first step is, are you paid a salary? Is it above that certain level? If it is, you might be exempt. You might not be entitled to overtime if you fell into one of several categories of management.

I am not going to go through them all, but let me take two very briefly. One of them is if you were an executive. If you got a salary above the threshold and you were an executive, you were not entitled as management to overtime.

How do you define executive? The old rule said—I hope you are sticking with

me here, Mr. President, and through you, all the vast numbers of Senators who are here on the floor listening to this—if you got paid a salary above the threshold and under the old regulations you supervised at least two people—and by ''supervising,'' the law meant you did at least one of the things that typically supervisors did. So it might be directing their performance on the job; it might be deciding what their schedules were, when they could come in to work, when they took vacations; it might be training them on the job. If you did any of those things and you supervised two people and you had a salary above $13,000, you were exempt from coverage.

You can see that covered a lot of people, a lot of your first-line supervisors. Think about this for a second. A lot of your first-line supervisors, your shift foremen, your line leaders, your assistant managers, they get paid above $13,000, they have two people underneath them, and they decide, for example, when you come in to work or which clothesrack you should be working on, if it is an assistant manager in a clothing store, right? So those people were exempt from overtime.

Now under the new regulations you have to be paid at least $23,600, you have to supervise two people, and then here is the thing: You have to hire or fire or effectively recommend the hiring or firing of employees. If you don't do that, you are not exempt, under that exemption anyway.

Look at the difference. Under the old law you weren't exempt, you were exempt if you got above $13,000 in salary; you supervised two people, and you did anything in terms of the direction of their work. But now you have to get above $23,600, you have to supervise two people, and you have to effectively recommend hiring or firing on a day-to-day basis. That very substantially restricts the exemption, which very substantially increases the number of people who are covered by the overtime laws.

You may be exempt if you supervise people. I just went through that. You also may be exempt if you supervise functions. Under the old law, typically the classic example is somebody who is the lab director in a laboratory. They may not have people under them, but they supervise the lab. But that exemption has been restricted, too, under the new regulations because it always required that you exercise what is called independent judgment or discretion with respect to whatever function you are supervising. But now the independent judgment and discretion must be with respect to something, to an operation that has a significant impact on the workplace. It is no longer enough to supervise a piece of a function; you have to supervise the whole thing. This, too, increases the number of people who are covered by overtime by reducing the breadth of the exemption.

The same thing could be said with regard to the professional exemption. There are many aspects of these regulations which were designed to and do work an enlargement of overtime coverage.

How do we know they do that? Because the regulations have been in effect for 6 weeks and all the general counsels of all the big companies are looking at them. Do you know what they are recommending? They are telling their employers we have to reclassify these job duties. These job classifications, they are no longer exempt from overtime. We have to start paying people overtime.

A survey was recently done among Fortune 500 companies by the HR Policy Association, and the return was this: Half of the Fortune 500 companies said they were going to treat more employees as eligible for overtime. The other half said there would be little or no change.

The University of Missouri at Colombia—of course we all know that fine institution in Missouri—they said 400 to 500 workers would be reclassified as eligible for overtime who were not eligible before.

Sears Roebuck & Company said 2,000 employees will be reclassified as nonexempt, and nonexempt means you are covered. Overtime has to be paid to you.

Burdines-Macy's, 3M, McDonald's, St. Jude Children's Research Hospital, the University of Kansas, they are all reporting that they are going to reclassify employees so they are covered by overtime, where under the old regulations that Members of this body have been fighting for a year to preserve, these people did not get overtime.

Senator BOND and I were contacted by police sergeants of the St. Louis City Police Department. These sergeants had earlier, under the old regulations, been found exempt, not entitled on a mandatory basis to overtime. They believed, reading the new regulations, that they would be entitled. I believe they have a good case. I don't want to prejudge it. Senator BOND and I asked the Department of Labor to investigate. They are investigating. My prediction is—I can't be certain because this gets down to the details of the job on a day-to-day basis, but my belief is that they will be entitled to overtime unless the police department changes their duties or arranges for them to work under 40 hours a week.

The new regulations contain specific references to police sergeants and firefighters and say they are entitled to overtime as examples of people who would be entitled under the new rule who were not necessarily entitled under the old—this with respect to a regulation that again I say for the last year Members of this body have been saying over and over again will restrict overtime. Yet I tell you and the Senate that it will work out to be the most significant enlargement of overtime since 1938. Not a single company reported that they were going to reclassify people downward to make them exempt. We are aware of thousands and thousands of cases already, in 6 weeks, where we know people are going to be reclassified as covered by overtime when they were not covered before.

We don't yet know—I asked the Department of Labor this today. I asked them if they knew of a single case that had gotten up to their level where a person who had been receiving overtime under the old regulations had lost it under the new. They don't know of a single case where that happened.

It could happen. There is one aspect of the regulation that applies to people who are getting salaries of $100,000 a year or more. I talked with a lady today who worked in Wage and Hour and was responsible for this. She said: As I read it, I don't really think it is going to restrict overtime. It could. I could probably construct a law school hypothetical where somebody in that position lost overtime. It is possible. We may see a handful. I don't believe we will see more than that.

I am not going to go through all these remarks because I know the staff has worked all weekend and I don't want to keep them any later. I thought it was important to say this. It is owing to Secretary Chao and for the hard work she has put in to make this statement and to make clear to the Senate how significant these new regulations are in that they are going to enlarge overtime.

I do think it is important to say also that if the efforts of Members of this Senate who have fought these regulations had succeeded, then these thousands and thousands of people who are now getting overtime would not be getting it. If the bill that has been sponsored—I understand we are going to vote on it through a voice vote—were to pass, it would mean the withdrawal of overtime protection for all the people in the last 6 weeks who have been reclassified as entitled to it. That would be a great shame. But it will happen because, as I read these regulations and as they are working in practice, they are working a significant expansion of protection for employees around the United States.

I congratulate the Department. They have taken care of inequities that have existed in this system for decades and decades. When you look at the struggle they have gone through, you understand why it was not remedied before now.

This is an arcane and a difficult area. Misinterpretations are possible. I do think many outside this Senate and some inside the Senate have been subject to a misinterpretation of these regulations. I hope I have cleared it up, and I wanted to have the opportunity to do that before we adjourned, until the election.

Mr. President, how much time do I have left?

The PRESIDING OFFICER. The Senator has 4 minutes.

Mr. TALENT. I think I will give that 4 minutes as a gift to the staff and to

you. I appreciate your staying afterwards to preside, Mr. President, and I yield my time.

ADJOURNMENT UNTIL 10 A.M. TOMORROW

The PRESIDING OFFICER. Under the previous order, the Senate stands adjourned until 10 a.m. tomorrow morning.

Thereupon, the Senate, at 9:26 p.m., adjourned until Monday, October 11, 2004, at 10 a.m.

CONFIRMATION

Executive nomination confirmed by the Senate October 10, 2004:

DEPARTMENT OF DEFENSE

RICHARD GRECO, JR., OF NEW YORK, TO BE AN ASSISTANT SECRETARY OF THE NAVY.

THE ABOVE NOMINATION WAS APPROVED SUBJECT TO THE NOMINEE'S COMMITMENT TO RESPOND TO REQUESTS TO APPEAR AND TESTIFY BEFORE ANY DULY CONSTITUTED COMMITTEE ON THE SENATE.