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Senate

The Senate met at 1 p.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 Spirit, who created us for harmony, You decide the number of the stars and call each one by name. Lord, a challenging week beckons and we desperately need Your spirit, power, and wisdom.

Long hours promise to test our patience and civility as unresolved issues seek to exasperate, producing discord. Help the Members of this body to sidestep the divisive power of contention and find common ground. Remind them that soft answers turn away anger. Destroy the winner-takes-all mentality and help them seek to understand before they are understood.

Make them exemplary models of reconciliation for a nation and world that watch their deliberations. May their serious efforts to build bridges have a ripple effect that will have a positive impact on our Nation and world.

We pray this in the name of the God of peace and concord. 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 THE ASSISTANT MAJORITY LEADER

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

SCHEDULE

Mr. MCCONNELL. Mr. President, today we will begin consideration of the Commerce-Justice-State appropriations bill.

Several Members have indicated they are prepared to offer amendments during today's session. Senators should expect rollcall votes to occur this afternoon. It is hoped that we can make substantial progress on the bill today.

NOTICE

If the 108th Congress, 1st Session, adjourns sine die on or before November 21, 2003, a final issue of the Congressional Record for the 108th Congress, 1st Session, will be published on Monday, December 15, 2003, in order to permit Members to revise and extend their remarks.

All material for insertion must be signed by the Member and delivered to the respective offices of the Official Reporters of Debates (Room HT–60 or S–410A of the Capitol), Monday through Friday, between the hours of 10:00 a.m. and 3:00 p.m. through Friday, December 12, 2003. The final issue will be dated Monday, December 15, 2003, and will be delivered on Tuesday, December 16, 2003.

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By order of the Joint Committee on Printing.

ROBERT W. NEY, *Chairman.*

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

As a reminder, the Senate will be in session tomorrow. There is a lot of important work remaining before we adjourn for the year.

In addition to the appropriations bills, there is the Military Construction appropriations conference report, and also the Department of Defense authorization conference report is available and will need to be disposed of early this week.

Also, as a reminder, we have a short time agreement with respect to the Syria Accountability Act. We will be scheduling that matter quickly as well.

Mr. MCCAIN. Will the Senator from Kentucky yield?

Mr. MCCONNELL. Yes, I yield.

Mr. MCCAIN. Mr. President, my colleagues may be wondering what happened on the Internet tax moratorium bill. I wish to make a couple of comments. There was significant disagreement over a variety of issues on both sides of the aisle concerning various provisions of S. 150, the Internet tax moratorium bill. It is now narrowed down to one final difference—the rest are negotiable or have been negotiated—and that is the definition of ''Internet access.'' It sounds pretty technical and a bit arcane, but it is really the vital aspect of this issue.

I think both opponents and supporters of the Internet tax moratorium will agree to some kind of moratorium, but the question of the definition of Internet access, particularly as it has been affected by the development of new technologies that now apply to the Internet, has complicated the issue. Intense negotiations are going on, on both sides. I think there is a recognition on both sides that we need to act on the issue of the Internet tax moratorium. I will be actively engaged in those negotiations, and I hope that absolutely before we leave for the Christmas break, we will have this issue resolved and voted on by the Senate.

I thank my friend from Kentucky.

Mr. MCCONNELL. Mr. President, I thank the Senator from Arizona, the chairman of the Commerce Committee, for his tireless efforts to get this important piece of legislation through the Senate. I wish him well. We really must achieve something in that area before we leave for this year.

Mr. President, I am going to ask for a few moments to address the Senate as in morning business. I don't know whether the Senator from Nevada would like to make a couple of observations prior to that time.

Mr. REID. Mr. President, simply when the Senator completes his statement, I am going to manage the bill for a while until Senator HOLLINGS arrives. I wanted to let everybody know that.

RESERVATION OF LEADER TIME

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

Mr. MCCONNELL. Mr. President, I ask permission to address the Senate as in morning business.

The PRESIDENT pro tempore. Is there objection?

Mr. REID. Certainly I have no objection, Mr. President. Could the Senator give us an idea of how long he wishes to speak?

Mr. MCCONNELL. Mr. President, 5 or 10 minutes, maximum.

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

FUNCTIONING OF THE SENATE

Mr. MCCONNELL. Mr. President, when the Constitution was written, Thomas Jefferson was away in France. He wrote George Washington asking him to explain the function of the Senate. Jefferson understood the role of the House to be a place of great passion and quick reaction, but he wasn't quite sure what this Senate was going to be like. So Washington used a Southern analogy of drinking tea, where folks in those days would pour the hot tea down into the saucer, let it cool, and then pour it back into the cup.

Washington suggested that the Senate was the cooling saucer—a place where things cooled off—of this new Federal Government they were creating, where the heated passions that might bubble over could cool down. That is the way the Senate has worked for over 200 years. I suggest it is unworthy of the Senate when those in it, Members of the Senate, fail to heed to the role of this body, which is to provide cool, reasoned, and less passionate judgment as we do the people's business.

Recently, we have heard the venting of frustration by leaders on the minority side. Callow, petulant characterizations have been directed at our leader, such as ''amateur.'' Someone on the Senate floor referred to the Republican leader last week as ''amateur'' and used the term ''mismanagement.''

Well, Mr. President, in addition to that being quite unsenatorial, let us recall that this leader is laboring under a one-vote margin, just as the last leader had to endure. Given that same burden, it might be appropriate and timely to compare the hard facts.

Those hard facts deal with the passage of bills through the Senate. With the same one-vote majority, Senator FRIST has pushed 10 appropriations bills across the Senate floor while last year's leadership delivered only 3. That is over three times as many appropriations bills through the Senate in this year compared to last year.

Now, the 11th bill has been the subject of a filibuster, and the remaining 2 should be dealt with this week. Again, last year, three appropriations bills moved through the Senate—the worst record in at least two decades.

Let me repeat that, Mr. President. Last year only three appropriations bills made it through the Senate, the worst record in at least two decades.

Let's look at bills signed into law. With the same one-vote majority as the other side had last year, Senator FRIST has delivered six appropriations bills into law. Last year only two were delivered.

Using the terms employed by the Democratic leadership, delivering just two appropriations bills into law is the worst Senate management record in 16 years. Let me repeat, Mr. President. Delivering just two bills into law, which is what happened last year, is the worst Senate management record in 16 years.

This year and last year, with the same one-vote majority, Senator FRIST has just done his job in funding the Government for this year. He did the job of last year's leadership by passing last year's funding bills back in January. What is amateur, to use the Democratic leadership's terminology, is not doing your job and blaming someone else. That is what is amateur, not doing your job and blaming someone else.

With a one-vote margin, this leader passed a budget, a jobs package, a prescription drug benefit for seniors, a global AIDS bill with record funding, established the Department of Homeland Security, and is completing the appropriations bills. That is the record of this leader, Senator FRIST.

Mr. GREGG. Will the Senator from Kentucky yield for a question?

Mr. MCCONNELL. I will yield for a question.

Mr. GREGG. Mr. President, the Senator mentioned the budget. As I recall, no budget was passed under the prior leadership in the prior year for the first time in—I don't know how long. Isn't it appropriate to pass a budget of the Government, and didn't the Republican leader pass that budget with a one-vote majority where it was not passed in the prior Congress?

Mr. MCCONNELL. The Senator from New Hampshire is entirely correct. Last year is the first year since the Budget Act was passed when the Senate didn't pass a budget. Last year, the leadership—I was about to get into that—didn't pass a budget and failed to enact all but two of the appropriations bills. They had plenty of time and energy to complain about jobs, and they did nothing about them.

The results are very different this year. We passed a jobs program, and today more Americans are at work than any time in U.S. history, a record 138 million jobs. This new leadership stands in sharp contrast to the past leadership.

Last year, the old leadership stalled desperately needed legislation on homeland security. For months, they could not decide whether to reduce or increase the President's power to fight terrorism. It took an election to break that deadlock. To use the Democratic leadership's words, it took the American people to say that amateur hour was over, and that is what the American people said a year ago.

These are the facts of leadership. When the margin of the majority is the

same but the record of accomplishment is so different, the answer can only be leadership. A one-vote majority this year versus a one-vote majority last year, and I would argue the big difference is the leadership of Senator Bill Frist of Tennessee, the majority leader.

I don't believe these types of attacks help in any way to advance the important business of the American people, the business they, in fact, elected us to do. The people want results, not name calling. We need to focus on the job, stop hurling epithets, stop the blame game, and instead complete the work the American people sent us here to do.

We all know that the last 2 weeks of this session are going to have ample opportunity for tension and disagreement. We have probably been together about as long as we ought to be this year, but the job is going to be finished by November 21, and it would be a lot easier if we could keep our rhetoric in check and not say things in the passion of the moment that we subsequently regret.

Much work remains to be done. We intend to accomplish the major tasks remaining for this year prior to Thanksgiving, and we are well on our way to doing that.

Mr. President, I yield the floor.

DEPARTMENT OF COMMERCE, JUSTICE, AND STATE, THE JUDICIARY AND RELATED AGENCIES APPROPRIATIONS ACT, 2004

The PRESIDENT pro tempore. Under the previous order, the Senate will proceed to the consideration of H.R. 2799, which the clerk will report.

The legislative clerk read as follows:

A bill (H.R. 2799) making appropriations for the Departments of Commerce, Justice, and State, the Judiciary, and related agencies for the fiscal year ending September 30, 2004, and for other purposes.

The Senate proceeded to consider the bill.

The PRESIDING OFFICER (Mr. ALLARD). The Senator from Nevada.

Mr. REID. Mr. President, this is a most important bill. I understand how important it is. I also understand it is normal procedure to have the chairman of the subcommittee speak first and the ranking member speak second. But I feel it is appropriate, in talking about this bill, to respond very briefly to my friend from Kentucky.

It is obvious to anyone who understands Senate procedure why things did not go well last year. It is because the minority stopped us from doing our work. We worked very hard to allow these pieces of legislation to pass. We have been partners with them. The Senator from Kentucky can talk all he wants about leadership, but everyone knows that the situation where we now have, toward the last few days of this Congress, a time set aside—30 hours—to talk about judges, and the comments in that regard upstairs by Senator DASCHLE and by me indicated that was something we thought was amateurish.

Mr. President, one of the chief aims of the Commerce-State-Justice appropriations bill is to articulate the priorities of the United States on matters related to business and the economy.

This legislation contains funding for the Small Business Administration, U.S. Trade Representative, the National Trade Administration, the Bureau of Industry, the Economic Development Agency, the Minority Development Business Agency, and a lot more.

I think everyone today should understand we are not going to have any votes for a while. Maybe by 6 o'clock, if people still want to vote they can vote, but I am going to be talking until 6 o'clock today and, if necessary, talk longer than that.

I, of course, understand the rules relating to the Senate. I understand there is a rule that for the first 3 hours, a Senator has to be talking about issues relating to this bill. I can certainly do that. But I say to my friend—and I have the deepest respect and regard for the chairman of this subcommittee, a former Governor of New Hampshire, a former Member of the House of Representatives, and now a Senator—that I am going to be talking for a while. If he wants to hang around and listen to me, he can do that. But this has certainly nothing to do with my friend from New Hampshire. It has everything to do with the way that I, speaking for myself, believe the Senate is being run.

I think it is inappropriate that we are not going to be able to work through this week; that we are going to take 2 days to talk about judges. I don't know the exact count anymore but I think it is about 168, 169 to 4, but yet we are going to take valuable time to deliver a message—I have been told the reason it is being done is to deliver a message to the base. I don't know what that means, except it is being done for reasons that I don't think are appropriate for the Senate.

The legislation that is now before the Senate is important. These entities that I have talked about serve one key mission, and that is to promote the development of American business and the American economy. As we think about how these agencies should carry out this important mission, it is appropriate to spend some time reviewing where the economy stands.

Certainly, one of the most important indicators of how the economy is faring is the unemployment rate. On Friday morning, the Department of Labor issued its report on the October 2003 unemployment figures. The unemployment rate was essentially unchanged, from 6.1 percent last month to 6 percent this month. We heard a lot about the fact that the economy grew by 126,000 new jobs in October. Sounds like a lot of jobs, until we understand it is catchup time and the 126,000 does not even keep up with the current population growth in the United States.

The administration lost no time putting out a series of press releases that said: Stronger growth; 126,000 new jobs in October show President's jobs and growth plan is working, but there is still more to do.

This bill, S. 1585, making appropriations for the Department of Commerce, Justice, State, the Judiciary, and related agencies for the fiscal year ending September 30, 2004, is important legislation. One reason it is important is to talk about how—

Mr. GREGG. Will the Senator yield for a question?

Mr. REID. No. I will in half an hour or so.

Mr. GREGG. My question was going to be as to how much time the Senator is going to take?

Mr. REID. When the Senator was off the floor—and I will repeat—I indicated my great respect and admiration for someone with a record of accomplishment that certainly is significant—Governor, Member of the House of Representatives, Senator, and I indicated publicly, and I will say again, my speaking today for an extended period of time has nothing to do with my regard for the Senator from New Hampshire. I am going to talk for probably 4 or 5 hours today.

Mr. GREGG. Will the Senator yield for a question? That is not a problem for myself. I would just like to know the approximate time.

Mr. REID. I have answered the Senator's questions, and I would appreciate it if he would not interrupt.

I do not think the President's plan is working for 9 million Americans who are unemployed. I do not think it is working for 2 million of those people who have been out of work for longer than 6 months. Gaining 126,000 new jobs is certainly better than losing an average of 85,000 jobs a month, which is what the country did for the entire first half of the year, but it does not mean their plan is working, and it does not mean it is getting easier to find a job.

In fact, it is not. October job growth does not even keep up with the population growth. October is the best month we have had in a long time in terms of job growth. Even October's job creation does not keep up with the population growth. So that means for the average person who wants a job, it is getting more difficult to land a position, not less difficult. Let me say why.

The number of young people entering the workforce is greater than the number of people retiring out of the workforce. The population of people who want to work rises every month, so there must be some level of increase in the number of jobs every month just to keep pace with this growth. Put another way, between the beginning of the Bush recession in March 2001 and last month, the U.S. working age population increased by almost 8 million people. Since March 2001, the U.S. working-age population has grown by 3.4 percent. Because of this influx of

working-age people, it is not enough just to keep employment level; we need to be adding jobs every month just to keep our heads above water. Most economists say we need to create about 150,000 new jobs every month just to hold steady with population growth. That is 150,000 just to remain static. October numbers do not get us that far.

One of the chief aims of the Commerce-State-Justice appropriations bill is to articulate the priorities of the U.S. Congress and the American people in matters related to business and the economy.

My distinguished friend, the majority whip, indicated the great accomplishments of the Senate this year, and I think we have had some, but we have been complicit. We have been partners in passing that legislation. Just so everyone understands that compromise is important in the Senate, not in the House of Representatives. In the House of Representatives, the majority party can run right over the minority party, but in the Senate it cannot be done.

Senator DASCHLE and I agreed the week before last and last week that we would work today and tomorrow, full-time, even though tomorrow is a legal holiday, and then out of the blue we learned there is going to be 30 hours spent on judges all Wednesday night and all day Thursday until 12 midnight Thursday night. This is a one-man show to indicate that the Senate cannot necessarily be run unless we work together. So there can be votes, but they will be tonight sometime. They are not going to be early this afternoon, as the majority has indicated to some of its Members.

The Commerce-State-Justice appropriations bill is an important bill. As I indicated, we need 150,000 new jobs every month just to remain static. October numbers do not get us even that far. That is why this bill is so important.

The Departments of Commerce, State, and Justice have wide-ranging jurisdiction, and the 126,000 jobs that the economy generated in October will not even absorb the new entrants into the labor market last month. Given how bad things are, and that seems to be a pretty modest goal, keeping up with population growth, should we not please try to keep up with job growth? We cannot even grow enough jobs to make that happen, let alone make up for 3 million private sector jobs that we lost since the recession began.

How many jobs should have been created by now? The difference between the number of jobs—and I will get some charts in a minute when the floor staff brings them to me. They will show in very significant detail the difference between the number of jobs we actually had in October and the number of jobs we have had if we had merely kept up with the population growth since the beginning of the recession is over 7 million.

Not only did we lose 2.6 million jobs, but we also never created the 4.5 million jobs necessary to keep pace with the population growth. So we are over 7 million jobs in the hole since the beginning of the Bush recession, and the White House declares that their plan is working. If it is working, we are in deep trouble.

October job growth is less than the President promised in February. The administration continues to make promises it cannot keep when it comes to job creation. In February, when the President was trying to win votes for his latest tax cut, the White House predicted that his so-called jobs and growth plan would create an additional 1.4 million jobs. That was 1.4 million jobs over and above the 4.1 million jobs that it was projected would be created even if no new taxes were passed. So we are supposed to get a total of 5.5 million jobs before the end of the next year. So this bill we are talking about that helps create job growth is something that has to be looked at very closely. This bill making appropriations for the Department of Commerce provided for funding for responding to the threat of terrorism. That has had a tremendous negative impact on job creation, but the President has not responded appropriately, and we will talk about this later, as well as the unfunded mandates that he has passed on to the States.

This bill deals with drug enforcement, judicial process, conducting commerce within the United States—and I want to make sure the Parliamentarian hears that, conducting commerce within the United States. It would seem to me that a discussion about jobs would certainly deal with commerce within the United States. In February, the President was trying to obviously win votes for his latest tax plan, which was a tax cut, and predicted at that time that his so-called jobs and growth plan would create an additional 1.4 million jobs. He said it. I did not. That was 1.4 million jobs over and above the 4.1 million jobs that were projected would be created even if there were no new tax cuts.

We were supposed to get a total of 5.5 million jobs before the end of next year. That is a job creation pace of over 300,000 a month. That would represent some strong growth. I think that would be tremendous. If the U.S. economy was adding jobs at that rate over a long period of time, we would be in much better shape.

In fact, if the economy added 300,000 jobs per month starting today, by next summer we would be approaching the levels we were at when President Clinton was in office, before the Bush recession began. But of course we have not approached that level of growth in any month since the plan was adopted. We have not even come close.

As I said before, most months we have slid further and further into the hole. Mr. President, 126,000 jobs is better than no jobs, and that is what we have had in the past; it is better than negative jobs, but it is not good enough.

The failure of this administration's latest plan should come as no surprise. We all remember the White House promising that the 2001 tax cut would create 800,000 new jobs by the end of last year. It didn't work. Instead of creating the 800,000 new jobs, we lost 1.2 million jobs. That is a net change of 3.2 million jobs. October job growth was less than the Secretary promised. Last month, John Snow, Secretary of the Treasury, told the New York Times he thought the economy would create about 200,000 new jobs per month.

I think the reason he said that was there were signs that even the Republicans were beginning to realize the plan was not a success. That is 100,000 fewer jobs than Snow promised, than he had even predicted a few months before when they were trying to get the plan passed.

Revising their estimates down by a third is a pretty surprising admission that they know their policy isn't working. Then they failed to even meet their lowered expectations.

On Friday, the White House issued a statement saying:

> The President's jobs and growth agenda is working. The economy created 126,000 jobs in October. Employment has now grown 3 months in a row for a total jobs gain of over a quarter of a million. The President's jobs and growth agenda is working.

That is what the administration says. That is not the reality. The administration promised us this plan would create 918,000 jobs over the past 3 months. Then the Treasury Secretary assured us it would create 600,000 in just 3 months.

This bill that talks about conducting commerce within the United States—jobs is commerce. I think it is very important we realize this legislation is dealing with commerce. Jobs is commerce. I think it is very important we spend some time talking about jobs.

The administration's Treasury Secretary assured us it would create 600,000 jobs in 3 months when we just heard previously it would be over 900,000 jobs. Now the administration is claiming its plan is working because it created over 250,000 jobs. Again, the math doesn't add up. We need 300,000 jobs just to keep up with the normal population growth. In fact, that is not keeping up with the pace the administration said the economy would achieve without the tax cut.

If this is a plan that is working, then it is sure not the same plan the administration told to Congress 6 months ago. That sounds like a plan the Enron accountants were involved in.

Let's not forget this was not an inexpensive proposal. We spent $350 billion on this scheme. Is the $350 billion plan a success? No, not because it created 250,000 jobs. It is a failure. They acknowledge, themselves, that without the tax cut, more jobs than that would be created. If my math is right, that works out to be $1.4 million per job.

We are here talking about the Commerce-State-Justice bill. It is an important piece of legislation. One of the

things this bill talks about in some detail is security and cooperation in Europe. It talks about judges, it talks about general administration, asset forfeiture, Office of Justice Programs. It talks about the National Institute of Standards and Technology. There are other matters, of course, that take up a significant amount of space in this dealing with Alaskan fisheries. It deals with noncredit business assistance. It is an important piece of legislation dealing with an automated biometric identification system. It deals with a joint automated booking system. It deals with detention trustees, administration reviews, counterterrorism fund, Office of Inspector General. It deals with the U.S. Parole Commission, Antitrust Division, National Childhood Vaccine Injury Act, salaries and expenses of the U.S. attorneys, U.S. Marshals Service, Foreign Claims Settlement Commission. It deals with courthouse security equipment all over the United States. It deals with the U.S. military construction programs all over the country, Marshals Service programs all over the country, interagency law enforcement, interagency crime and drug enforcement. It deals with programs with the FBI.

There are many programs there that we will come back and talk about later dealing with the FBI, including a polygraph program. They polygraph themselves, but of course it has been declared it doesn't work very well for others. The Bureau of Alcohol, Tobacco, Firearms, and Explosives; activation of new prison facilities in Hazelton, WV; Canaan, PA; Terre Haute, IN; Victorville, CA; Forrest City, AR; Herlong/Sierra, CA; Williamsburg, SC; Bennettsville, SC. There is a total of almost 10,000 beds for a prison facility.

So there is certainly a lot of meat in this bill, items to talk about other than the job loss that has been created in this country.

There are other things we could do to create jobs in this country. The President has talked about tax cuts. It has resulted in a few jobs, but in reality this President is headed for the worst record of job growth in more than 50 years. This goes back to the days probably of Herbert Hoover. All other Presidents created jobs. There was net job growth even in the 2 Eisenhower years—one term of his Presidency lost jobs overall, the other gained jobs.

In no other time have we had a President who has lost jobs—as you can see here, lots and lots of jobs. It is now over 3 million. Every other President has created jobs.

If things continue—and it appears they will—this will be ''George W. Hoover Bush's Presidency,'' creating no jobs, losing jobs. When they issue a press release saying, ''Boy, we are doing well; we created 126,000 jobs,'' understand that doesn't keep up with the 300,000 necessary to keep up with the population growth.

What are some of the other things we can do? Prior to September 11, I had a plan that was accepted by cities, counties, and States all over America. The National Council of Mayors met here in Washington and passed a resolution approving my suggested legislation. It would be a jobs program for sure. It would be the Federal Government spending money to create jobs in infrastructure development: highways, bridges, water systems, sewer plants. These are things that are in such desperate need of repair, renovation, and construction.

All over America there are blueprints stacked up gathering dust. They are ready to be effectuated, but there is no money. Why is this important? It is important that we do this to effect commerce in this country because for every $1 billion we spent, we would create 47,000 high-paying jobs. Those are direct jobs. And the spinoff from those jobs would certainly be more. People who work at those infrastructure development jobs would need more fuel for their cars, they would need more cars, they would need refrigerators, carpets, clothing—on and on. And every one of those products they buy, someone has to produce them, and it would create jobs in America.

The spinoff would be very significant.

That is how this administration should create jobs, but it has shown little interest in investing in our country.

This year's Transportation bill is one of the largest bills we have. Up until now—hopefully, they will join with us in producing a highway bill—we have fought for months to get a high enough number so we could have a highway bill. We hope to be able to mark something up on that maybe even this Wednesday if the judges issue doesn't get in the way of that.

But the highway bill, home building, highway construction—those are jobs that are created. I remember when I first came to Washington how important those two areas of commerce were—building houses and building roads.

We need to move beyond that and do something about the bridges. A significant number of bridges we have are in a state of disrepair. They won't allow school buses to drive over some of them because they are in such bad shape.

We know how important it is to do something about our water systems throughout the country. Sewer systems—we could have been much further down that line today and looking at significant job creation if the administration had focused on measures which we know work rather than squandering the surplus on tax cuts for the wealthy—for the elite. There is nothing wrong with being wealthy—for the elite.

The administration's $350 billion tax was supposed to be a jobs and growth act. Where are the jobs? If we spent $10 billion for needed road construction, for sewer systems which need to be repaired, and for water systems which are in need of renovation and repair in Colorado and Nevada, and the other 48 States, we would be creating thousands of jobs. If we spent $10 billion directly, we would create 470,000 jobs. Of course, $20 billion would create 920,000 jobs. The spinoff from those would be so absolutely, unbelievably powerful for this economy. But we are not doing that.

The jobs I am talking about can't be shipped overseas. If you are going to build a road, it will be built here in America. If you fix a sewer plant, it will be done here in America. If you repair a water system, it will be done here in America. If you fix a bridge, it will be an American bridge. You can't ship those overseas to the lowest bidder.

Where have all the jobs gone? What has happened to the jobs? They are going to different places. I have a few charts, and we have a lot of time today. We will spend a little time talking about that.

Goodyear Tire lost 1,100 jobs; Levi Strauss, San Antonio, TX, lost 800 jobs just this past month; Sumco in the State of Oregon, 190 jobs just last month; John Harland, Decatur, GA, 3,500 jobs last month; Johnson & Johnson, New Brunswick, NJ, almost 100 jobs in September of this year; DSM Pharma, Greenville, NC, 2,000 jobs in October—a month ago; TRW, Greenville, NC, 229 jobs, September 2003; Bluebird—you have seen Bluebird, the big, beautiful buses which I am told are the Cadillac of recreational vehicles—Fort Valley, GA, 400 jobs lost just last month; Dan River, Fort Valley, GA, 447 jobs last month; YKK, Macon, GA, 36 jobs the month before last; Timken, Torrington, CT, almost 200 jobs last month; Spring Industries, Lancaster, SC, 330 jobs the month before last; and, Bronx, NY, 100 jobs this month. Bronx, NY, is where the company that makes Everlast equipment is located. Boxers have Everlast on all of their boxing equipment, such as Everlast boxing gloves. They do not have many jobs left in Bronx, NY, anymore. They are checking out. They lost 100 jobs.

Brylane, Indianapolis, IN, 415 jobs; Olin Brass, Indianapolis, IN, 310 jobs gone; Inland Paperboard, 287; General Electric, Schenectady, NY, 400 jobs last month; Tysons, Hope, AR, birthplace of President Clinton, lost 500 jobs—I can imagine how significant that was in that little community—just the month before last; Kelly Springfield, Tyler, TX, lost 200 jobs in October of 2003; Bristol Compressors, Bristol, VA, 300 jobs; Internet, Radford, VA, 348 jobs the month before last; and Alcoa, Bellingham, WA, 200 jobs.

Throughout the afternoon we will refer to some of these. You can kind of get the picture of why jobs are leaving.

I am worried about my constituents. I am confident that every Member of this Senate is worried.

What am I supposed to tell the people in Nevada who are unemployed? Should I tell them that the $350 billion which was used to help mostly the wealthy is going to help put them back to work

when we have waited this long for two huge tax cuts to create new jobs? It only lost jobs. I voted against the plan because I didn't think it would create jobs. But once it passed, it was the only game in town. I hoped it would succeed, but it hasn't.

I am not in favor of higher taxes, not at all. I wish taxes were much lower. But we have to be realistic. We have to see that people are happier with jobs—not tax cuts for the elite of this country. I want to see my unemployed constituents have the opportunity to go back to work. Too many of them are still anxious and hurting and waiting. They have waited for a long time. It really tears at your heartstrings.

I don't see all of the letters. I wish I could. But I see a lot of them. I don't see all of the letters and the e-mails pouring in these days. But my staff picks out those that are representative of a large group of letters.

I have been hearing from large groups of people in Nevada who have never been unemployed in their whole lives. They have never been unemployed. These aren't people who are holding out for cushy, high-paying jobs. They are proud people with a strong work ethic who are willing to do whatever amount of hard work it takes to keep a roof over their heads and food on their tables, people who never thought they would be in this position. They are still having no luck finding work.

I received a letter a few weeks ago from a woman who lives in Spring Creek, NV. Spring Creek is a place in northeastern Nevada. It is a community that has grown up over the past 25 years. It is a beautiful community. She said she wrote to me and she wrote to the President and to Congressman GIBBONS who is the Member of Congress who represents that part of the State of Nevada. She said:

I really do not expect any of you will actually read this letter. It will probably go to an aide, and if I am lucky I may get a response. But why am I writing this letter?

She answers her own question:

Because there are many other people in this country who are unemployed and have run out of unemployment benefits. Many people like me feel that writing a letter like this is a waste of time. Many have no hope but I believe that one person's voice can make a difference. I live in a small community in northern Nevada. There are at least 50 people applying for every job opening. We have thought about moving to other cities but the job market is tight everywhere. My husband is disabled and receives a small Social Security check every month, but it pays all but $15 for our first mortgage on our house. I have to supply the money to pay a second mortgage and all of our living expenses. The company that I was working for updated their computer system to make it easier to purchase items over the Internet web site. As a result, they laid off some people, including me. Since then I have sent out hundreds of resumes with little response. I am not writing this letter to get a handout or for sympathy. I have faith in God that he has a perfect job for me that he will provide for us. There are many thousands of people who do not have hope. They have been laid off multiple times and are eligible for little or no unemployment benefits. I have friends that were laid off over a year ago and are still trying to find work. Unemployment should not be a free ride. All I'm asking is that people who are truly trying to find work, get a fair chance to provide for their families while they seek employment. I would work a part-time job or two part-time jobs in lieu of a full time job if I could find one. So the solution is to get the economy going so the people like me can find a decent job or jobs. Gentlemen, this is the greatest country in the world. The middle class needs a break. I don't want a free ride, I just want a job or jobs to supply the basic needs of our family.

Mr. President, she is right. It is our job to get the economy going so she can get on with her life. It is astounding we spent $350 billion on a jobs proposal and it did not make a bit of difference in the circumstances she and many millions of people face.

We have job losses all over America. Bradford, WA, we talked about, 348 jobs; Alcoas Intelco in Bellingham, WA, 200 jobs lost last month.

My friend, RON WYDEN, the distinguished senior Senator from Oregon, said Oregon has the highest unemployment of any State in the Union—the beautiful State of Oregon, the highest unemployment of any place in America. That is too bad for RON WYDEN and Senator GORDON SMITH and the people who live in Oregon.

Graphic Packaging, West Monroe, LA, 30 jobs. Think of that, 30 people who have a job one day and do not have a job the next day. What does this do to their families? Thirty people, that is what people say. Remember, are the 30 people going to be able to continue to make their house payments? The average person in America is out of work 5 months. The people who work at Graphic Packaging in West Monroe, LA, how will they handle bills for 5 months? Some get a job in 8 months, some in 4 months, unless things get worse. It averages 5 months. What do they do for car payments? Or the payments due when they bought the refrigerator they had to buy because the old one broke down? What about the house payments, the rental payments? What are those 30 people going to do? What are they going to do for Christmas? Remember, these people in West Monroe, LA, were laid off just the month before last. What are they going to tell their children come Christmastime? Is it a single-parent family that is taking care of the children and lost her job in West Monroe, LA? Is it a two-parent family with both working? We can envision the circumstances of those 30 people. It is scary. It is frightening. Only 30 people, some would say, but remember, every one of the 30 is a human being, with a job they no longer have.

Trane, Lacrosse, WI, 350 jobs last month; Bob's Candles, Albany, GA, 54 jobs. I have purchased Bob's Candles. There are 54 less people who are working at Bob's Candles. That happened last month. Parker Hamilton, 100 jobs, Akron, OH; Delphi Packard, Warren, OH, 214. I am confident this company is making parts of automobiles. Brach's Candy, based in Chicago, 1,000 jobs gone a month before last; Hussman in Bridgeton, MO, 250 jobs; Waterbury Plastics, Randolph, Vermont, 29 jobs—only 29 jobs—the month before last. Vermont is a sparsely populated State that has gotten a lot of attention in recent months because of a Presidential candidate, former Governor Dean of Vermont. Kodak, Rochester, NY. Many years ago when I was there I visited the man who ran the company then and went to his home in Rochester; 800 jobs; ConStar Plastics, Reserve, LA, 69 jobs; Kosa Textiles, Cleveland County, North Carolina, 150 jobs; Cone Mills, Rutherford County, North Carolina, 600 jobs.

I heard Senator HOLLINGS from South Carolina talking about the textile industry being so devastated. North Carolina has a lot of new things happening and it is certainly good, but they are losing a lot of jobs—600 jobs at Cone Mills.

Radio Shack, Swannanoa, NC, 140 jobs; American Uniform, Robbinsville, NC, 34 jobs; Hewlett-Packard, Nashua, NH, 50 jobs; Delco Remy, Bay Springs, MI. They are losing jobs because of the auto industry. Trellborg Automotive, Logansport, IN, 454 jobs; Coca-Cola, Highstown, NJ, 900 jobs; Thompson Consumer Electric, Marion, IA, 820 jobs; Lear, Traverse City, MI, 300 jobs; Gateway, Hampton, VA, 450 jobs; Hamilton Beach, Washington, NC, 1,400 jobs. They all went to Mexico. Pfizer, Kalamazoo, MI, 615 jobs; Ramtex, Ramseur, NC, 90 jobs; Boeing, Seattle, WA, 710 jobs just last month; Outokampu, Buffalo, NY, 26 jobs; Motorola, Elma, NC, 60 jobs.

This is happening all over America; thousands and thousands of jobs are lost, and I have only talked about a few of them. I will talk about more later.

We could have done a better job to spend part of the $350 billion on infrastructure and investments which meet our basic needs. They are an amazing job stimulus, as I have spoken. All over the country we have an infrastructure need—roads that have been on the drawing board for years with no money to pay for them; airports in need of renovation, but there is no money to pay for them; sewer systems that need repairs, but there is no money to pay for them.

I held a hearing shortly before September 11 and I invited the mayors of Washington, DC, Atlanta, GA, I think maybe Denver, CO, Las Vegas, NV, and we talked about what was going on around their cities with the need for renovating and repairing sewer systems. I can remember very clearly the mayor of Atlanta, GA, said he was

looking forward to getting out of office and the reason he was so anxious to get out of office is because he is sure, in the foreseeable future, the whole water system in Atlanta will collapse. It is old and needs huge amounts of money to bring it up to a condition that is not one that will fail. That is basically what all the mayors say.

The mayor from Las Vegas had a different situation. There the growth is so tremendous—even though in Atlanta the growth is tremendous, their concern is in old Atlanta—in Las Vegas, with the new people moving in, just last month, 8,500 people moved to Las Vegas. They need help with the infrastructure.

Schools are crumbling. The average school in America is about 50 years old and in a state of disrepair.

In Las Vegas, the Clark County School District has a little different situation. We cannot keep up with the growth, even though we are dedicating one new school a month. We held the record 2 separate years. We built and dedicated and opened 18 new schools. We need some help.

But that is the way it is all over America. Other places need the money to renovate schools. It is something that is badly needed, but it is so important to not only creating jobs but giving kids a decent place to work on their school studies. With a lot of the old schools, we can get them all the new computer equipment you want, but they are not wired to handle the new computer equipment. They need to be rewired. They need to be fixed so they can use modern technology, which they cannot do now.

For every $1 billion, 47,000 direct high-quality new jobs are created. These new jobs create thousands of additional jobs through the ripple effect that I talked about. When someone gets a job as a surveyor for a new road, a bricklayer for a new school, one engineer for a water project, or a crew member on a road construction project, these jobs help all layers of our society—the educated, the people who are not educated in books but know how to run heavy equipment, as I indicated, those who lay brick; those who can do work in a house, carpenters.

These are the kinds of things that are important. This is the ripple effect I am talking about. As I said, someone gets a job as a surveyor for a new road. What follows that? Then you have to have someone come and do the engineering after the survey. That creates jobs. After that is done, you put it out to bid, and then the people come in.

As an example, in my little town of Searchlight, NV, we had—it is no longer the case—the busiest two-lane road in all of Nevada. It was a death trap: 36 miles of it from Railroad Pass to Searchlight, a two-lane road, traffic would back up for 4 or 5 miles. Big trucks would slow down traffic to 40, 45 miles an hour. People would get anxious and try to pass, and there would be head-on collisions, with many people killed.

We were able to get 18—or half that distance—put out to bid, and now that is completed. I was home this past weekend; I drove that 18 miles. It was so nice, so safe. Then the other 18 miles—which is put out to bid as we speak—it was not as bad as it used to be because there the congestion was not as much because people knew within 18 miles they would be out of the traffic jam. They were a little more patient.

But on that road to Searchlight, as I just indicated—with the heavy equipment there, graders and bulldozers, and those carryalls, those huge things that have to level the place where the road is going to be; and this is not a very hilly area, in fact, not hilly at all—people were there doing cement work for the culverts, and hundreds of people were put to work as a result of that job. I really do not know what the bid was on that, but I am sure it was $25-$30 million, and it created lots of jobs, as you can see.

These people who do this work—the people who built the road to Searchlight—every one of those people with these high-paying, good jobs were able to go out and have dinner more often than they had in the past. They were able to buy that coat for winter. They were able to take a little weekend trip, maybe to LA, or visit relatives someplace else, maybe in Salt Lake City, and spend a few dollars along the way.

That is what this is all about. They have money to spend on a car or a dishwasher. As I indicated, all over America we will have more people coming to Las Vegas. Multiply that person, that one person who is working on that road to Searchlight, by 47,000, and you suddenly have the business of the auto dealers, the hotels, and the airlines picking up. Soon they decide it is time to bring on more sales people, more hotel workers, more pilots. That is the ripple effect we need.

That is why this bill we are debating today from the Committee on Appropriations, making appropriations for the Departments of Commerce, Justice, and State, the Judiciary, is an important bill. It is a bill that I have talked about before that does a lot of things that are important for this country.

This bill provides for conducting commerce within the United States—conducting commerce within the United States—among other things. That is a part of the bill I am talking about now: conducting commerce, jobs. There is no more important commerce in all of America, all the world, than jobs.

What is it like to have a job? What is it like not to have a job? I come from one of the smallest States, population-wise, although certainly for many generations we, population-wise, were the smallest State in the Union. We are now about 35th, 36th. There are a significant number of States smaller than we are but a lot of them bigger.

On the Senate floor, just the other day, I was having a dialog with my friend from the State of Michigan, the junior Senator from Michigan, Ms. STABENOW. She indicated that the State of Michigan has 9 million people in it. That same day, a few minutes later, I asked the Senator from Illinois how many people live in the State of Illinois. The senior Senator from Illinois indicated that 12.5 million people live in the State of Illinois.

Nevada, Mr. President, is approaching 2.5 million people, so it is significantly smaller than those States, but we still have tens of thousands of people who are not employed. We do not know the exact figures. Between 60,000 and 80,000 people are unemployed who are officially counted as unemployed. There are many more, of course, who are unemployed. The official classification undercounts the number of people who are interested in jobs and available for work. So the true number of unemployed people is significantly higher than the 60,000 or 80,000 I talked about.

These are tens of thousands of people anxious to find work but unable to do so. Think about that. Sometimes we get overwhelmed by statistics. But think about that piece of information for just a minute.

Let's take the lower figure. Let's say 60,000 people. I think it is higher than that, but let's say there are 60,000 people without a job. Each represents a family struggling or going without, the American dream deferred, sometimes disappearing forever.

I have already talked about people being concerned about losing a job. People are worried about how to make their next mortgage or rent payment. They are worried about what will happen if they encounter unexpected medical bills. They worry about buying clothes for their kids. They worry about how long this jobless recovery is going to last and what will become of them when it is over.

In America today, there are 44 million people with no health insurance. There are millions of others who are underinsured—people who have insurance, but it is not very good.

I would hope that we would spend some time on that. Wouldn't it be good if we spent 30 hours of the Senate's time debating health care for all Americans—health care for all Americans? But we are going to spend 30 hours talking about judges.

As Senator TRENT LOTT said when he was majority leader, every time he went back to Mississippi, no one ever asked him about judges. He said—and I am paraphrasing—it is a nonissue. That is true, especially when you have what is taking place during the present President's tenure in office: 168 judges approved, 4 disapproved; 168 to 4. We are going to spend 30 hours nonstop of the Senate's time talking about a ratio of 168 to 4. I wonder if they would move to 30 hours if instead of having a 98-percent track record, it was 99 percent. Maybe that would only require 15 hours. If it was a 99.5-percent track

record, maybe they would only spend 10 hours talking about judges.

And I see constantly—I see constantly, Mr. President—statements being made that there has never been a filibuster before of a judge. In fact, there was a statement issued today. I have it here on my Blackberry. Here it is right here. I am sorry to hold up the Senate. Here it is right here. This is a statement from Senator FRIST. He says:

What we are doing to move our judicial nominations forward. This year the Senate has suffered unprecedented obstruction of a Presidential judicial nominee by filibuster. In the history of our Nation, this has never been done before.

(Mr. CHAMBLISS assumed the Chair.)

Mr. REID. Whoever prepared this for Senator FRIST had better revise it. During the time I have been in the Senate, there have been filibusters. I can think of a couple. I can think of three filibusters that had to be ended by a vote of the Senate. Of course, previously there were all kinds of filibusters. We know that. So this is simply untrue: ''in the history of our Nation, this has never been done before.'' That is simply untrue.

Rather than spend this time on the 168-to-4 record this President has, the country would be well served if we spent 30 nonstop hours talking about the lack of health insurance in America. Forty-four million people have no health insurance. Many millions of others have a lack of health insurance. There are millions of people who have no jobs. We are going to spend 30 hours talking about four people who want a new job. They already have a job. They want a new job.

Thirty hours should be spent talking about the need for health care reform in America. The doctors would appreciate it. The patients would appreciate it. All over America, we see doctors making less money, we see patients getting less care. Where is the money going? It is going to the middlemen, HMOs, insurance companies. Why don't we spend the 30 hours talking about health care, have a real debate on that subject? We have no legislation dealing with health care. We have a Medicare bill through which we are trying to get prescription drug benefits to seniors. In fact, at 1 o'clock today, I understand, there was a meeting going on, a very important laydown of that legislation.

There is not now a bill dealing with prescription drugs for senior citizens, as all senior citizens in America know. It spilled over into Medicare in an attempt to revise Medicare, to privatize Medicare. The chairman of the House conferees has said that that is one of the most important issues, to develop ''privatization.'' They have a fancy new name for it, but that is all it means. The American people aren't going to stand for that. Why don't we have a debate for 30 hours dealing with health care?

These people in Nevada who are out of a job, they really understand how important it is to do something to create jobs. It is a bleak picture and can drag on and on for families in this situation. These people who used to get up every morning and go to work all day, who used to feel the sense of purpose and pride that comes with holding a job, now that security is gone.

Why don't we spend 30 hours talking about why we haven't increased the minimum wage? That would help commerce in this country. That would work within the confines of this legislation. The minimum wage is now $5.15 an hour. Take that math and figure out how tough it is. That is why two people are working two jobs, just like the woman whose letter I read into the RECORD saying she would work two minimum-wage jobs gladly.

Who are the people who have these minimum-wage jobs? Are they kids in high school at McDonald's flipping hamburgers? No. Sixty percent of the people who draw the minimum wage are women. For the majority of those women, that is the only job they have for their families. Why don't we talk about the minimum wage? Let's spend 30 hours talking about people who are working two jobs at $5.15 an hour, who have no benefits, no medical benefits, no retirement benefits. We should spend a little time on them, on the minimum wage. I think that would be something that would be very beneficial.

San Francisco just passed a citywide minimum-wage bill. It has been done in other places in the country. But in the Federal Government we can't do that. We are going to spend 30 hours talking about four people who already have jobs who want a new job. They want to be an appellate judge.

Estrada is not unemployed. Owens is not unemployed. Pryor is not unemployed. Pickering is not unemployed. In fact, Judge Pickering is already a Federal judge. Pryor is attorney general of the State of Alabama. Owens is a supreme court justice of California. Miguel Estrada is one of the highest paid lawyers in the community. But we are going to spend 30 hours talking about four judges or wannabe judges who already have jobs. But no time do we spend on the minimum wage. No way let's back away from that, because all that affects is a bunch of kids flipping hamburgers.

Why don't we talk about the majority of the people who draw the minimum wage who are women, desperate for work for themselves and their families. We are going to spend 30 hours, starting Wednesday at 6 o'clock, until midnight Thursday, talking about four people who already have jobs. We are not going to talk about the people who are unemployed in my State or about the minimum wage or about health care reform.

It is a bleak picture. Today, the average unemployed worker is out of work for up to 5 months. That is the average. The number of people unemployed for greater than 6 months is at a 20-year high.

It is time we look at some of the places we are losing jobs again. These are jobs that have been lost in the last few months. Just to talk about some of them: Central Textiles, Pickens, SC, 140 jobs, the month before last. I am not familiar with this company: Leica, Depew, NY, 55 jobs; a company called Tecumseh—that is an Indian name—Douglas, GA, 535 jobs last month; General Electric—we have heard that before; they must be cutting jobs all over the country—General Electric, Greensville, SC, 600 jobs just last month; Albany International, Greenville, again, South Carolina, 120 jobs, the month before last; Rockwell Collins, Cedar Rapids, IA, 155 jobs; General Electric again, Shreveport, LA, 200 jobs—that is 800 jobs; if you add all those on the other charts, it is well over 1,000—Carrier Corporation, 1,200 jobs, Syracuse, NY; Tolcheim, Washington, IN, I don't know how many jobs. That is off my chart so I am sorry about that; Nestles USA, Fulton, NY, 400 jobs; Sonoco Flexible Packaging, Fulton, NY, 1,300 jobs; Black Clawson, Fulton, NY, 322 jobs; Tyco, that has made a little bit of news lately; the guy had a birthday or anniversary party that cost $6 million—one of the bosses—Argyle, NY, 335 jobs. New management decided how to handle things: Just move the jobs to Mexico. That is what they decided to do.

Back to the chart: Maytag, Galesburg, IL, 380 jobs; Gates Corporation, Galesburg, IL, 76 jobs; Mettler-Toledo, Inman, OH, 150 jobs; Paper Converting, Green Bay, WI, 115 jobs; Slater Steel, Fort Wayne, IN, 418 jobs; Cognotti Industries, 100 jobs; Tolcheim, Fort Wayne, Freemont, IN, 454 jobs; International Paper, Sartell, MN, 542 jobs; R.J. Ray, Buffalo Grove, IL, 56 jobs;

These jobs were all lost within the last couple of months—some last month.

Playtex Products, Dover, DE, 94 jobs; Parker Hannifin, Marion, OH, 165 jobs; from Greencamp, OH, again, Parker Hannifin, 165 jobs; Amcast, Richmond, IN, 133 jobs; Delco Remy, 349 jobs, Anderson, IN; Dana Perfect Circle, Richmond, IN, 182 jobs; Royal Precision, Torrington, CT, 110 jobs, the month before last.

It is going on as we speak. We have this administration boasting they created 126,000 jobs, which doesn't keep up with growth. Although I was immensely relieved to see the economy stop losing jobs, I have been more than a little concerned about the administration's promise. It doesn't seem to know whether the current unemployment rate of 6 percent is a problem or not. I think it probably is.

During the last full month President Clinton was in office, the unemployment rate was 3.9 percent. The reversal has been enormous. On February 4, the President's Council of Economic Advisers published a report entitled ''Strengthening America's Economy: The President's Jobs and Growth Proposals.'' In that report, the President's

economic advisers laid out the case for a new tax cut, saying:

Thus far in the recovery, the labor market remains a weak spot, with the unemployment rate reaching 6 percent in November and December.

This past Friday, the White House issued a statement claiming, again:

The President's jobs and growth agenda is working.

The unemployment rate is 6 percent. How can this jobs plan be working now when the unemployment rate is exactly the same as when the President's smartest economic advisers called the labor market a ''weak spot.'' In February they considered 6 percent such an urgent problem that it was a justification for a $300 billion tax cut. Now 6 percent unemployment is reason to celebrate and claim credit for its successful economic plan.

We have a situation here where the distinguished majority whip came to the floor and criticized statements where we on this side talked about this 30 hours being something that was not very smart—for lack of a better word—to do. Then they talked about the one-vote majority. We had a one-vote majority, and now they have a one-vote majority. Now things are ''so much better.''

Well, I hope today people understand why they are so much better. We can help a lot, as we have this past year, in passing the legislation and the shortness of time on the appropriations bills we were unable to accomplish. We did not have the luxury of the cooperation of the minority. We have been cooperating. As you can see, today isn't the most cooperative day. I think the majority should learn the lesson they need to work with us, not against us. We can work together. We have worked together in the past. We will work together in the future. But everyone understands the Senate is a body created more than 200 years ago and it was created to protect the minority, not the majority. The majority can always protect itself. The minority needs help. What gives us that help is the Constitution. The majority should understand it just cannot run over us, say we are going to work Monday and Tuesday, then have 30 hours for judges, votes in the afternoon on Monday, and then we will decide what we are going to do Tuesday later. We need to be part of the plan, part of the program.

The Senate is an interesting place. Everything has to be done here by unanimous consent. If there is no unanimous consent, not much happens. Today, not much is happening because there is no unanimous consent. It is normal on a bill like this appropriations bill for the subcommittee chair to give a nice little statement, the ranking member gives a nice little statement, and then you go to amendments. We have been so cooperative. The reason the majority today has been able to pass these appropriations bills is because we have cooperated. We have not tried to stall them. We did not speak at extended lengths of time on amendments. I worked to get amendments taken off the list so we could move forward to the next appropriations bill. That is the way the Senate should work. We have set an example as a minority on how it should work. There should be an example set by the majority as to how things should work.

You just cannot run over us. The Senate is set up to protect one Senator. There are 49 of us. We need some protection, some help, some cooperation, some partnership. I hope everybody understands that when the majority decided to move along, we were whipping through these appropriations bills. I had many conversations with the Appropriations Committee chair, Senator TED STEVENS—a wonderful, fine friend and a great Senator—and we had a plan to finish these bills. We could have finished them. I don't expect anybody in the majority to publicly criticize their leader, but I believe there is criticism in the hearts of some of the people in the majority.

What a ridiculous thing to have 30 hours—a week before trying to get out of here—spent on the jobs of 4 people, when there are over 3 million people who have lost their jobs and more than that are unemployed. We are going to spend 30 hours on the lives of four judges. That just doesn't seem right to me. If people are wondering why we are not moving along, you can do all the name calling you want, but I think the history books will reflect how the leadership has been—at least during the past few days when you interrupt the ending days of a session to spend 30 hours on a wasteful exercise.

I agreed with the administration back in February when it believed the 6 percent unemployment indicated the economy was weak. That is why I look forward to this bill being done—this bill dealing with the legislation that is led by the senior Senator from New Hampshire and the senior Senator from South Carolina. It is important legislation. It is just not the number of people out of work that is disturbing; it is also the fact it is taking people so long to find something new. In fact, wages and salaries are falling precipitously. There is an increasing amount of slack in the labor supply.

It is impossible to truly understand how bad the job market is now without being aware of a couple factors:

First, the record length of time jobs have been declining; second, the growth in the working-age population since the recession began in 2001; third, the fact that many people have stopped looking for a job out of hopelessness, not because they no longer want to work, and they are no longer counted as unemployed. Until this job slump, the number of jobs had never fallen steadily for 2½ years. These numbers go back to 1939. As of November 2003, payroll jobs had fallen by 2.6 million below the level of March 2001. Unfortunately, at the same time that job market shrank 2 percent, the working-age population grew by 2.4 percent. Had job growth kept up with working-age population instead of falling, we would have 7.2 million more jobs right now.

I watched on TV—it may have been last night. I got home from Nevada last evening. It could have been last night. It could have been the day before. They did an interview about a young woman who had gotten her first job. She was so excited. She had graduated from college and for almost 2 years she was unable to find a job. She had finally gotten a job.

The picture I want to paint here is the fact that the people who are out of work are not just a bunch of people who are looking to dig ditches. They are people from a wide spectrum of our society, people like the woman I saw on TV, who is highly educated, and not just people who have no education. Everyone in between is out of work and needs a job.

This job deficit hits everybody. We should recognize that we have not only the problem of creating new jobs to fill the jobless market created by those people who lost work but also the new jobs that need to be created because of new people moving into the workforce. But, sad to say, job creation has occurred mostly in low-quality jobs.

As glad as we should be that any new jobs are actually springing up, it is still worth examining what kinds of jobs are growing in today's economy. The firm of Challenger, Gray, and Christmas analyzed the October job growth figures and determined that job creation was the heaviest in some of the sectors where the pay was the lowest—retail, temporary help service firms, bars, and restaurants.

Jobs, commerce—Commerce-Justice-State, it is a very important topic. I am going to talk about some of the other things in the bill later on dealing with the State Department and the Justice Department, but now I am just talking about the Department of Commerce—jobs, commerce for this country. Most of the jobs that have been created are low-quality jobs.

As I look back over my work career, I remember some of the jobs I have held. I have been very fortunate, I understand, to have the job I have now, a contract with the people of the State of Nevada. I have a little over a year left to run on that contract.

I have done a lot of jobs. I have worked with my hands. I dug ditches and got paid for doing that. I remember one job I had digging holes to put up wooden telephone poles for power to the top of a mountain, some kind of microwave relay station. The man I worked with didn't speak English. I was a young boy, maybe 16 years old. Oh, it was such hard work. We had a bar, and it was hard getting the dirt out of that hole. We spent all day together and we couldn't talk to each other, except by facial expressions. When it was time to eat, we kind of got that idea. That was one job. I was happy to have that job.

I drove a truck for two summers. I worked as a warehouseman. For many years—they were special summers—I worked in service stations where I pumped gas and tried to sell lubes, carburetors, greasing the bearings—doing minor mechanical work.

I was a janitor part time in college. I was a radio dispatcher for the city of Las Vegas building department. I was a Capitol policeman right here. I worked in a post office. I had lots of different jobs before I graduated from law school, but they were all jobs.

I was so fortunate. I never had to look for a job. I always had a job. I am very fortunate because for a lot of people that is not the case. There are lots of people who have never had a job.

We have a wonderful program in Nevada. We have given Federal appropriations to this program. It was originally started because of the largess, the generosity of Kirk Kerkorian, a very wealthy man, a former client of mine who is one of America's entrepreneurs. He wanted to set up a job-creating program in a high unemployment area in west Las Vegas. Now it is run by a conglomerate. Kerkorian got it started and has since given it up. Now the Federal Government is involved in it. Labor unions are involved in it.

What it did was create jobs, teach people how to work who had never worked before. It is an amazing program. We have lots of service jobs in Las Vegas. Las Vegas, as you know, has about 140,000 hotel rooms. We have more hotel rooms on the four corners of Tropicana and the strip than the entire city of San Francisco. We have lots of hotel rooms, and we need people to make beds in those rooms, to clean those rooms. We need people to be waiters and waitresses in those large hotels.

What we do at that facility that I just toured again a few weeks ago is teach people who have never worked before to work. We teach them the meaning of a job; why they have to be on time; why they are not supposed to take time off unless it is absolutely critical they take time off. It has worked well.

We place over 80 percent of these people. Those who are not placed we really would have trouble placing them anyplace because the jobs are not there.

We need to create jobs. We need to be involved in the creation of jobs. Even though we are creating many low—what is the word, not low quality because they are important jobs—jobs in the lower sector because they don't pay enough. We need to create jobs, like I got a job digging post holes. It was a very important job for me. It helped me get through school. It was important I had that job.

In these jobs where job creation has been the heaviest in recent years, including this group that is paid the lowest—that is the word I was thinking of—the firm of Challenger, Gray, and Christmas found weekly earnings in these work places—temporary service, bars, restaurants—average $336, $318, and $225 respectfully. Each of these sectors pays wages well below the average of $521 per week for all these industries.

This firm found that nearly one out of four unemployed Americans has been out of work for 6 months or more. The largest percentage, 47 percent of those experiencing extended unemployment, are white-collar workers in management, professional, sales, and office occupations. Of those unemployed, 1.4 million said they were able to find only part-time work. That figure represents a 27-percent increase from just a year ago when only 1.1 million workers were trapped involuntarily in part-time jobs. Now it is up another 200,000.

Mr. President, 7.5 million Americans worked two or more jobs in October, up from 7.3 million just a year ago. That is an increase of 200,000. The percentage of people for part-time jobs increased from 1.7 million to 1.8 million over the same course of the year.

I want to look at where some more of these jobs have been lost.

Hedstrom, Ashland, OH, 60 jobs, just last month; Laurel Hills, NC, Spring Industries, 120 jobs, month before last; Wolverine Tube, Bonneville, MS, 300 jobs, month before last; Rome Cable in Rome, NY, 240 jobs, month before last; Union Tools, Frankfort, NY, 80 jobs, month before last; Arvin Industries, Franklin, IN, 850 jobs, month before last; Alpine Electric, Greenwood, IN, 195 jobs; Standard Motor Products, Argos, IN, 150 jobs; Cavalier Specialty Yarn, Gaston County, SC, again Senator HOLLINGS' home State, 120 jobs; Bowling Green Mill, Gastonia, NC, 160 jobs; Parkdale Mills, Belmont, NC, another 161 jobs.

In Wichita, KS, we have a situation where Boeing just laid off 4,800 people in the last year or so.

Tecumseh—we have seen that name before. Now we see it in New Holstein, WI, 300 jobs; Sheboygan, WI, 292; Perry Judd, Waterloo, WI, 372 jobs; Gateway, Sioux City, SD, 700 jobs in a small State such as South Dakota. They must feel that very significantly. International Polymers, Hamblen County, TN, 450 jobs; Lea Industries, North Carolina, 120 jobs; Chiquola, Kingsport, TN, 200 jobs; Modine Manufacturing, Clinton, TN, 200 jobs; Lucent, Genoa, IL.

These are the issues I have focus on today. There are more. This is not from the Bureau of Vital Statistics or the Department of Commerce. These are jobs that have been lost, that we have had staff pick up reading different news articles around the country. It is demonstrative of what is happening to jobs in America. They are leaving us.

The New York Times, I agree with it on occasion; I disagree with it on occasion. It is a newspaper that is a very substantial part of the American political body. People certainly view it as an important newspaper. The editorial section is probably one of the best in the world, if not the best. I was struck by a column written by Bob Herbert just a few days ago, on October 27. This article is so good, and the subject matter of it is so important that I thought I should read it.

I want to read what Bob Herbert said in the New York Times because, trying to paraphrase what he says does not capture all of his arguments in this October 27 column. It is entitled: ''There is a Catch: Jobs.''

He is, of course, referring to the economic growth announcement last week. Here is what he said:

The President tells us the economy is accelerating, and the statistics seem to bear him out. But don't hold your breath waiting for your standard of living to improve. Bush country is not a good environment for working families.

In the real world, which is the world of families trying to pay their mortgages and get their children off to college, the economy remains troubled. While the analysts and commentators of the comfortable class are assuring us that the President's tax cuts and the billions being spent on Iraq have been good for the gross domestic product, the workaday folks are locked in a less sanguine reality.

It's a reality in which: The number of Americans living in poverty has increased by three million in the past two years. The median household income has fallen in the past two years. The number of dual-income families, particularly those with children under 18, has declined sharply.

The administration can spin its ''recovery'' any way it wants. But working families can't pay their bills with data about the gross domestic product. They need the income from steady employment. And when it comes to employment, the Bush administration's has compiled the worst record since the Great Depression.

The jobs picture is far more harrowing than it is usually presented by the media. Despite modest wage increases for those who are working, the unemployment rate is 6.1 percent, which represents almost nine million people. Millions more have become discouraged and left the labor market. And there are millions of men and women who are employed but working significantly fewer hours than they'd like.

Jared Bernstein, a senior economist at the Economic Policy Institute, has taken a look at the hours being worked by families, rather than individuals. It's a calculation that gets to the heart of a family's standard of living.

The declines he found were ''of a magnitude that's historically been commensurate with double-digit unemployment rates. It is not just that there were fewer family members working. The ones who are employed were working fewer hours.''

According to government statistics, there are nearly 4.5 million people working part-time because they have been unable to find full-time work. In many cases, as the outplacement firm Challenger, Gray & Christmas noted in a recent report, the part-time worker is ''earning far less money than his or her background and experience warrant—i.e. a computer programmer working at a coffee shop.''

Economists expect some modest job creation to occur over the next several months. But there is a ''just in time for the election'' quality to the current economic surge, and even Republicans are worried that the momentum may not last. The President has played his tax-cut card. The spending on Iraq, most Americans fervently hope, will not go on indefinitely. And President Bush's

own Treasury secretary is talking about an inevitable return to higher interest rates.

Where's the jobs creation miracle in this dismal mix? Meanwhile, these are some of the things working (and jobless) Americans continue to face: Sharply increasing local taxes, including property taxes; steep annual increases in health care costs; soaring tuition costs at public and private universities. Families are living very close to the edge economically, and this situation is compounded, made even more precarious, by the mountains of debt American families are carrying—mortgages, overloaded credit cards, college loans, et cetera.

The Bush administration has made absolutely no secret of the fact that it is committed to the interests of the very wealthy. Leona Helmsley is supposed to have said that only little people pay taxes. The Bush crowd has turned that into a national fiat.

A cornerstone of post-Depression policy in this country has been a commitment to policies aimed at raising the standard of living of the poor and the middle class. That's over.

When it comes to jobs, taxes, education and middle-class entitlement programs like Social Security, the message from the Bush administration couldn't be clearer. You're on your own.

Now, what did he say in this column? What did he say? He said that what is going on in this administration is not good for working men and women. He said, among other things, Bush country is not a good environment for working families. He said the administration can spin its recovery any way it wants, but working families cannot pay their bills with data about the gross domestic product.

As I said, people in America are more concerned about J–O–B, not GDP. They are more concerned about jobs than the gross domestic product.

I think it is interesting to note that Herbert also says that in addition to the gross domestic product not being something that people are concerned about—they are more concerned about jobs—economists expect some modest job creation to occur over the next several months. Remember, we need 300,000 jobs just to keep up with normal growth in this country. Meanwhile, those things that American families, the jobless Americans, continue to face, sharply increasing local taxes, sharply increased local taxes—Nevada was one of about 41 States during this year's legislative sessions that were in deep financial trouble. Nevada had three or four special sessions of the legislature called in an attempt to try to right the ship, to try to figure out some way that they could afford to handle this rapidly growing State.

As I indicated earlier, talk about commerce, this bill in Commerce-State-Justice, commerce in Nevada is very difficult because just last month, in September, we had 8,500 new people move into the Las Vegas area. I think we have to understand that the legislature had to keep up with the demand for services that we had throughout the State of Nevada, but they were faced with some unfunded mandates, such as Leave No Child Behind.

Clark County School District, I think, is the sixth largest school district, maybe the fifth now, 270,000 students or thereabouts, a difficult time because of what we passed on to them with Leave No Child Behind. We are leaving lots of children behind because we have not funded the Leave No Child Behind Act.

Homeland security, I had a conversation with Tom Ridge last week. Tom Ridge is a wonderful man. He is my friend. We came to Congress together in 1982. He was a good Governor of the State of Pennsylvania, one of our very highly populated States. I was happy to see the President select him as head of the Department of Homeland Security and now the Secretary of Homeland Security. He has a difficult job, and in Nevada we are faced with significant problems. We have huge responsibilities. We have responsibilities for people visiting Nevada from the State of Georgia. We have to take care of the people from the State of Georgia just like we have to take care of the people of the State of Nevada if there is some kind of emergency. There is no separation. But when we have, on any given day, 300,000 to 500,000 tourists in Las Vegas, it makes it really tough. We have had lots of added responsibilities because of the legislation we have passed dealing with homeland security.

I spoke with the Secretary about the need to try to do something to help an area where we have so many tourists on any given day. We need help. I am confident the Secretary understood and listened and will try to do his very best to help. But we have unfunded mandates because of that.

I heard my friend, the distinguished junior Senator from Tennessee, the former Governor of Tennessee, and he should understand what unfunded mandates are about. LAMAR ALEXANDER spoke in the Chamber last week on several occasions about an unfunded mandate dealing with the Internet tax debate we brought up last week. He said that is an unfunded mandate.

I don't know as much about that as I know about education and police work, but they are unfunded mandates. That is why there have been sharply increased local taxes all over America.

Mr. Herbert also says there are steep annual increases in health care costs. We have talked about that. Not only are there 44 million people with no health insurance, but we have 44 million people who have not only no health care insurance but those health care costs are increasing. I think that is very significant. Health care costs are going up, as Mr. Herbert said.

There are soaring tuition costs at public and private universities. There was an article in one of the weekly magazines—I don't remember whether it was Time, Newsweek, or U.S. News and World Report this week—that reported the most expensive private school in America, just for tuition, is $41,000 a year. State universities, which you would think would be significantly cheaper—some are cheaper; they are almost half as much. The highest State tuition, according to this weekly magazine, is almost $20,000 a year—soaring tuition costs at public and private universities. Why? They have to do that because there is no money coming from State governments. It is as simple as that. They have to do that.

But I think the most telling thing Mr. Herbert wrote about is when he said Leona Helmsley is supposed to have said only little people pay taxes. The Bush crowd has turned it into a national fiat.

Are unemployment benefits important? Of course they are important. During the first thousand days under Bush, unemployment is up, the rate of impoverished is up, debt is up, and judicial vacancies are the lowest in some 15 years. So what are we going to spend 30 hours on? We are not going to spend 30 hours on unemployment. We are not going to spend 30 hours on the impoverished of America. We are not going to spend 30 hours on the deficit. When the President took office, the surplus over 10 years was about $7 trillion. That is gone. We are now spending in the hole.

Is that important to commerce? I think so. But we are not going to spend 30 hours talking about the debt. This year we will have the largest debt in the history of this country. But we are not going to spend 30 hours talking about that. We are going to spend 30 hours talking about judges.

Judicial vacancies—are they up? They are down. They are the lowest in some 15 years. We are going to take 30 hours talking about the lowest judicial vacancy rate in 15 years. We are going to take 30 hours not talking about the things that should be down—unemployment should be down, impoverishment should be down, deficits should be down, debt should be down. We are going to talk about the thing that is up. We have no vacancies to speak of—the lowest in well more than a decade.

I think this administration has things turned around. Doesn't common sense dictate we should be spending 30 hours talking about unemployment? Talking about impoverishment? Deficit? Debt? They were up during the first thousand days of this President's administration. But no, we are going to talk about judicial vacancies, which have been the lowest in many years.

Later today I will have a few things to say about judicial pay and about the Justice Department. We can talk about Clinton judges being denied hearings, let alone votes. We can talk about the names. We have a judicial scoreboard chart. We can compare the Bush record and the Clinton record. We have a lot to talk about here.

I want the American people to understand what we are doing. We have said we believe it would be better if the Senate spent its time—30 hours, going from 6 o'clock Wednesday night to midnight on Thursday—talking about issues we need to complete. I begged—well, that is a little strong. I certainly pleaded with the majority last week on at least five occasions to pass a military construction bill. I thought that

was very important, that we pass the military construction conference report. It was important to do. I believe it was a partisan attempt to hold up the bill for reasons I don't understand because it should be nonpartisan, because it deals with supporting our forces on military missions all over the world.

For Nevada, it would have a devastating result. While we delay, there will be no vehicle maintenance facility for Nellis Air Force Base, the premium aviator training facility in this country; no water treatment facility in Hawthorne, where we have the Army depot to store ammunition, a depot supplying munitions for our war effort in Iraq and Afghanistan. There will be no telecommunications security force building for the Reno Air National Guard, a Guard unit fully deployed on many fronts in the war on terrorism; no new hydrant fuel system for our planes and pilots in Nellis. We could go on.

The military has critical needs across the country and every Senator here knows how crucial these facilities are. I haven't mentioned the barracks and additional security measures this bill includes for our military around the world. Certainly they need the funding more than anyone, but apparently there has been a decision on the other side of the aisle not to turn to this bill and not to turn to the Syria Accountability Act, both of which have a direct connection for our national security and the security of our forces.

This bill we are now debating, the conference report on Commerce-State-Justice, is extremely important, dealing with jobs, and we spent a lot of time talking about jobs and we need to talk about jobs.

We have people dying every day. There is a global war on terror. And we are going to waste 30 hours so one side can try to secure some political points. What has happened to the urgency?

This bill we are now taking up, Calendar No. 274, from the Committee on Appropriations chaired by Senator GREGG, is an important piece of legislation. It covers a lot of different areas that are so important to our country.

We have this bill, which is H.R. 2799. We would like to complete this, as we have a number of our other appropriations bills, and go to conference. But we have been unable to do that for reasons that are quite obvious to everyone here.

I cannot understand why we cannot spend 30 hours of the people's time working on things the people care about, and not on things we should not be spending time on, like four people who want to get better jobs—well, only three now, because Miguel Estrada has withdrawn his name—Owen, Pickering, and Pryor. They want jobs, so we are down to three now. We are going to spend 30 hours—I guess 10 hours per judge.

(Mr. COLEMAN assumed the chair.)

Mr. REID. Unemployment benefits—and certainly this legislation we deal with here is concerned about unemployment, as I indicated. We talked about this on previous occasions, about the people who have been unemployed, even within the confines of this legislation right here. People about whom I have talked, people on these charts, certainly are included within this bill. There are many people affected when this bill cuts back on a number of programs, people who have lost their jobs.

As I indicated here, we have unemployment that has gone up. Actually it was 3.89 percent. The number of impoverished has gone up, the number of uninsured has gone up, the budget deficit has gone up, the national debt has certainly gone up, and judicial vacancies have gone down. Rather than talk about these things in red—impoverishment, uninsured, budget deficit, national debt—we are going to spend 30 hours talking about the three who want a better job, not the over 3 million who are unemployed.

Last month I got a letter from a woman who lives in Las Vegas. She writes:

DEAR SENATOR REID: On July 2, 2003, I became a displaced airline worker

—in fact, maybe I will read that letter a little bit later.

If I could have the people up front keep their voices down a little bit, please; sorry about that. It is a little distracting.

The report on the bill that is now before us goes through a number of issues. It talks about the purpose of the bill. It talks about the hearings that were held dealing with this legislation. Then it has a summary of the bill. The summary of the bill states:

The budget estimates for the departments and agencies included in the accompanying bill are contained in the budget of the United States for fiscal year 2004 submitted on February 3, 2003. The total amount of new budget authority recommended by the committee for fiscal year 2004 is $37,637,536,000. This amount is a decrease of $362,290,000 below the appropriations for fiscal year 2003 for these departments and agencies. The committee's recommendation is $770,699,000 below the budget estimates.

The following paragraphs highlight major themes contained in this bill: terrorism, protecting America's children, information technology enhancement, reprogramming, reorganizations, and relocations.

This is an important bill. The two people who have operated the subcommittee for the last several Congresses are extremely good. I already earlier today complimented the senior Senator from New Hampshire about his stalwart public service. The senior Senator from South Carolina, Mr. HOLLINGS, will go down in history as one of America's truly great Senators. He is the longest serving junior Senator in the history of this country as a result of the longtime service of then-senior Senator Strom Thurmond. Senator HOLLINGS, to my disappointment, decided not to run for reelection. But he has not lost an ounce of his vigor, and he is a great Senator. He and Senator GREGG have done a wonderful job on this bill over the years. I look forward to completing this legislation when we have an opportune time to do that.

Some may ask, Why is the Senator taking so much time on the floor? I don't speak often on the floor. I speak often but not very long. The reason I am speaking today is because I think it is important people understand that the 100 Senators here have to get along. The majority has to be aware of the minority.

The Presiding Officer is a new Senator but he is someone who has been involved in government for a number of years. He will come to understand better than he does now that for the Senate to work well, we have to work together.

Just to repeat for those people within the sound of my voice, Senator DASCHLE and I have worked very hard. I have spent days of my life here on the Senate floor—not all of the time pleasing Democratic Senators. I have tried my best to make the trains run on time, as one Senator told me when he criticized me.

But I don't regret anything that I have done to help the Senate schedule. I think it is important the trains run on time in the Senate. That is why I have worked personally very hard with the Democratic Senators to move legislation. If a Senator has four amendments, can he get by with two? You ask for 45 minutes; can you squeeze your time down and take half an hour? As a result of that, we have been able to do some really good things. It is not because of me. It is because of the cooperation of the 48 others on this side of the aisle.

That is why Senator DASCHLE and I decided that it would be in the best interests of the Senate to go along with working on Monday starting early in the day, and work all day on a legal holiday, Veterans Day. I told the majority leader here on the floor publicly on more than one occasion that the veterans of America will understand that. They will understand why we have to work on Veterans Day because the work we do here is for them directly.

We are moving along well, even when we are, in effect, jabbed in the eye by being told, you can go ahead and have your Senators jam this time because what we have to do is allow 30 hours of time during supposedly the next to the last week we are in session to talk about four judges. For four failed judgeships, we are going to spend 30 hours beginning at 6 o'clock on Wednesday until midnight on Thursday.

I personally thought that wasn't the way to run the Senate. I think as history judges, history will agree with me. What is there that would create the desire to use our time to talk about judges? Senator LOTT has said that there are more important issues. When he was majority leader, he said when he went home no one ever asked him about judges.

Rather than have the majority run the Senate today, as they want, I want everyone to understand that we have a voice in what goes on around here. We are in the minority—51 to 49. We are not too far behind the show here. Had it not been for the untimely death of the Senator from Minnesota, Paul Wellstone, it probably would have been 50 to 50. But it isn't. Paul Wellstone was killed. His death was untimely, and I grieve for him often. But the fact is that we also have a say in how this place is run.

Mr. LEAHY. Mr. President, will the Senator yield for a question without losing his right to the floor?

Mr. REID. I will yield for a question for up to 1 minute without losing my right to the floor.

Mr. LEAHY. Mr. President, I heard the Senator's question about delaying on this question of judges. Could it be that our friends on the other side, having blocked 61 of the President's nominees usually because of one Republican's objection, are concerned that Democrats have helped confirm a record number of President Bush's nominees, has stopped less than any President in recent history, and that maybe they want to obscure their own record and not be in the position to praise ours?

Mr. REID. Mr. President, on this floor, I have defended, advocated, and commended my friend, the senior Senator from Vermont, for his handling of the Judiciary Committee. It is a very difficult committee. But he has handled it masterfully. He has been fair.

As indicated by the record of accomplishments of President Bush, who is now in office, to look at the accomplishments of the Senator from Vermont, one need only look at what President Bush has accomplished with his judiciary. Mr. President, 168 of his judges are now serving lifetime appointments. Four were turned down. That is 168 to 4.

I would like you to put that chart back up.

I want my friend to understand what I just said. What I said is that the unemployment rate has gone way up; impoverished rate, way up; uninsured, way up; budget deficit, way up; national debt, way up; and, judicial vacancies, down.

Why are we going to spend 30 hours—not on the national debt, not on the budget deficit, not on unemployment, not on the impoverished, not on the uninsured—on 4 judges who have been turned down—4 of the 168? We are going to spend 30 hours of the Senate's time with the lowest judicial vacancy rate in about 15 years.

I say, through the Chair to my friend from Vermont, that I hope he holds his head high, as he knows he does, in working his way through these judges. Frankly, some of these judges I have not been wild about voting for, but I believe the President of the United States has a lot of latitude. But I also believe in the Constitution of the United States. This little document says Senators have the role of advising and consenting to the President's actions in certain cases, and judges is one of them. We have taken our constitutional prerogative and on four occasions said no, these are not people who should serve in the U.S. court at a level they are seeking.

I say to my friend, rather than spending our time on the unemployed, on impoverished people, on uninsured people, on the budget deficit, on the national debt, all of which are skyrocketing—this is not a close call. We had a surplus of $7 trillion. We now have debt of $5.6 trillion. Figure that out. Does this deserve a few minutes talk? What about the deficit? We will have the largest deficit in the history of our country this year. People are out there underinsured, uninsured, and poor. What is happening in America today, I am sad to report, is the rich are getting richer and the poor are getting poorer.

I spent time talking about the unemployed today. It would be nice to spend a little time talking about the unemployed. But no, we are going to take 30 hours, from 6 p.m. on Wednesday until midnight on Thursday, talking about how badly Miguel Estrada was treated; it was awful what we did to that man; We asked him to fill out a form; We asked him to give us his memo that he prepared at the Department in the Solicitor General's Office. No, he could not do that—no way. We picked on that man so badly. What a shame. It seems, if he wants the job, he should fill out the application. People are saying this guy is something, he is great. Well, if he is so great, let's see what he said in his memoranda in the Solicitor's Office. It is not as if he is out of work. He is a man with one of the best jobs in Washington. I don't know how much money he is making, but it's lots.

Then we had Priscilla Owen. The President's own lawyer, Judge Gonzales, who served on the Texas Supreme Court with Priscilla Owen, said she should not be there, basically. That was an opinion he wrote. Now they are trying to remedy that situation. She also has a job.

Then a man by the name of William Pryor wants to be a Federal judge. One problem: He has a record that is embarrassing. I don't know why they put him in. That was an easy vote because his record is so bad.

Then Judge Pickering. I wish we could have done something to help Judge Pickering because of my high regard for TRENT LOTT. I think the world of TRENT LOTT, and Judge Pickering is from Mississippi. Judge Pickering is from Mississippi. His son came to speak to me—a wonderful young man. But his father has a bad record. He is a Federal district judge. He should stay there and be happy. But he wants to be a Federal circuit court judge. Every civil rights group in America opposed that—every one—because of what he had done while he was a judge.

I say to my friend, through the Chair, the distinguished Senator from Vermont—my friend—I compliment him, I applaud the job the Senator has done in representing not only the State of Vermont but the State of Nevada and the rest of the country in a dignified way. The Senator knows he has an obligation, even when he gets the worst of the worst. We have been very careful.

We make sure there has to be a unanimous vote out of the Judiciary Committee. We follow that almost perfectly. We look for certain things to do, a unanimous vote by our people that serve on our committees. The Senator has done a wonderful job.

I ask my staff to put on the board the chart about judges. I am not on the Judiciary Committee, but I have learned a lot about the judicial committee. This bill, of course, deals with the Federal Judiciary. One section of this bill deals with that, and we will get to that in more detail.

I failed to mention something important earlier. According to Estrada's financial disclosure forms, he makes about half a million a year where he now works. So we are going to spend 30 hours dealing with how poorly this man, who makes half a million a year, is treated—not talk about Americans making $50,000 a year; and not, as I talked about earlier today, about the jobs.

There are a few jobs being created in certain areas. From the Challenger firm, job creation was heaviest in the sectors where the pay was lowest: Retail, temporary, bars and restaurants, making weekly earnings of $366. So they work 10 weeks and they make not much money. That is $3,066; about $15,000 a year. That is the highest paid—in retail. The bars and restaurants make $225 a week.

I don't think there should be a lot of tears shed on Miguel Estrada because he makes $500,000 a year. I don't know the salaries of Pryor, Pickering, and Owen, but it makes these jobs that are being created look pretty bleak.

Before I get off the subject, I will point out some Clinton circuit nominees who were ''well qualified'' by the American Bar Association, who were blocked from being confirmed or delayed by Republicans who voted against them. Allen Snyder, never given a vote; Elena Kagan, never given a vote; Merrick Garland waited 559 days; Sonia Sotomayer, Second Circuit, 494 days; Robert Cindrich, never given a vote. Stephen Oaslofsky, never given a vote; James Beatty, never given a vote; Andre Davis, never given a vote; Elizabeth Gibson, never given a vote; Alston Johnson, never given a vote; Enrique Moreno, never given a vote; Jorge Rangel, never given a vote; Kathleen McCree Lewis, never given a vote. We had cloture votes with Berzon and Paez; there were other filibusters previous to that.

As Senator DASCHLE said when we took over the Senate, it was not payback time; we would work to get judges

approved. We have done that. It is the lowest vacancy rate in many years. We have turned down 4 and approved 168.

Some time ago, within the past hour or so, I said I got a letter from a woman who lives in Las Vegas. She wrote to me:

Dear Senator REID: On July 2nd, 2003, I became a displaced airline worker after 38 years as a TWA, now American Airlines, flight attendant. I received no severance pay. My unemployment benefits will expire January 2nd, 2004. Congress has passed new legislation which made December 28, 2003, the cut off date for temporary extended unemployment compensation. After that day, there will be no more extended unemployment compensation extensions. I'll miss the deadline for extended unemployment benefits by five days. I'm a single woman and sole supporter. I have no skills applicable to this difficult job market, and my age makes an already bad job market even more limited. It will take time to learn skills to find a suitable job. Extended unemployment benefits will be needed for my very survival. I ask you to please support Senate bill 1708 which will extend temporary unemployment compensation benefits and provide additional unemployment benefits for those of us who can't find jobs.

Thank you for your consideration in this matter.

It is important to be straight with the American people. The administration may be able to put out press releases declaring a dismal record a successful one, but the people know better. They know the administration's plan is not working. They know it from their own experience or from a friend, neighbor, or spouse who is unemployed and unable to work, from the overcrowded or rundown school their children attend, from the hours they spend in traffic every day.

Mr. President, $355 billion is a lot of money to invest in a plan—any plan—to create jobs, but it is a plan that has failed. Instead of trying to turn a failure into a success by press release, and nothing more, this administration owes the American people a new course, a new plan that will actually put them back to work.

I have spent time going over the job creation of other administrations and what has happened in this administration. It is not a pretty picture, and that is an understatement. It is not a pretty picture. In this administration, for the first time, there has been job loss going back to the Hoover years. That is not good. That certainly is not good.

This bill is something that is important. It is important. It is also important to recognize we have an obligation as a Senate to work to try to get things done. But there have been efforts made in recent days to show how little we can get done. Does the majority think they are dictators as to what happens around here? They can say: We are going to have votes. Come on in, we are going to have votes. They can have votes, but not when they want them, if that is what they want to do.

As the Presiding Officer has learned in his short tenure in the Senate, one Senator can really mess things up around here. We need cooperation. We need people to work together. We do not need to be told, ''Come on in Monday, we will vote.'' ''What time?'' ''We don't know.'' ''What time can people go to their events, if at all?'' ''Well, we will find out later.''

I hope the ensuing days will include us a little more in what is going on around here. It may not be something the majority wants to do, but I am saying it is something the majority has to do. The majority has to work with us or nothing gets done.

I can say from experience the majority, which was the minority, pretty well understands that because they were able to stop us from doing lots of things. As the Senator from Kentucky pointed out this morning, when they, the Republicans, were in the minority, they did a good job of stopping us from doing things. We had difficulty passing appropriations bills. We got three passed. We have cooperated, and there have been 10 completed. That is because we have cooperated.

Because of us, the minority worked with the majority, and we will continue to do that at a subsequent time. But we want to be involved in what is going on around here. As I said, it is easier to be a dictator, to be a tyrant, to just tell us what we are going to do. That is not how the Senate works. You need to work with us. That is what this is all about today. You need to work with us. Because if you think you can just march down any road you want to go, you are going to find roadblocks in that road.

We have worked to pass important legislation, and we will continue to do that. Bills have been done and the budget was done this year because we worked to help them get done.

I want, before we leave this judges thing, and talking about why I think it is important to talk about unemployment, about jobs, to mention Judge Pickering now makes about $155,000 a year as a district court judge. Supreme Court Justice Owen makes $113,000. William Pryor, as attorney general of Alabama, makes $125,000. That pales in comparison to Miguel Estrada.

These are the four, the ''Big Four.'' We are going to spend 30 hours on the Big Four. The Big Four make a total of about a million dollars a year, and we are going to spend 30 hours lamenting how poorly these people have been treated, and we will not spend 30 seconds talking about the unemployed of this country, people who are out of work for an average of 5 months.

We have this administration, after years of job losses, coming forward and saying: Oh, we finally got it. Everything is in shape. We have had two huge tax decreases, and we were supposed to create millions and millions of jobs. We need 150,000 just to keep up with population growth. But we are not going to talk about that. We are not going to talk about the economy. We are going to spend 30 important hours of this body talking about judges—four judges—and how poorly they have been treated: Pickering, Estrada, Pryor, and, of course, Owen; 30 hours. It does not seem fair to me.

I repeat, more poor people, more unemployment, more deficit, more uninsured, and we are going to spend 30 hours telling how sad it is a man making $155,000 a year did not get a promotion, that a woman making $113,000 a year, whom the President's own lawyer does not think is very good, and an attorney general who makes $125,000 a year, plus the star of the lot, Estrada, who makes half a million dollars a year—we are going to spend 30 hours on them.

We do not have time to talk about the minimum wage because they make $5.15 an hour—$5.15 an hour. Why, if they work real hard, they will make over $40 a day. If they are lucky enough to work all week, they will get $200—$200—in a week.

Well, if that is not enough for them, let them find another part-time job; let them find another minimum-wage job. There are lots of them. Well, not as many as you would think. They are kind of hard to find, especially if you do not have a car or you can't pay the bus fare to get there. But we are going to spend 30 hours talking about 4 people who make a total of a million dollars a year, and we are not going to spend 5 minutes on the approximately 9 million people who are out of work in America today. Some people have been unemployed so long they do not even count them on the unemployment rolls anymore.

I wonder if it is important that we spend a little bit of time back here talking about education. We know how difficult it is for parents to send their kids to college. I have talked about that a little today. For one school, tuition is $41,000 a year.

Public education. I think the highest is about $18,000 a year. But it is very expensive. In Alabama, I think they are raising the tuition there by 30 or 40 percent to help pay for some of the shortages they have in the State budgets. I wonder if we should spend a little time talking about education. I think it would be a good idea.

I have a little school named after me in Nevada. It is a small school in Searchlight. I am proud to have that school named after me. It is a better school than the one I went to, at least physically. Where I went to school, it was a little different than now. But that little school needs a lot of additional things they do not have there. It is part of the very large Clark County School District. The Clark County School District, as I said, has about 270,000 students. They are fighting to build new schools, hire new teachers. Last year, they had to hire about 3,000 teachers just to keep up with growth.

Figure that out: Hire 3,000 new teachers. That is very hard to do. That is only 1 county out of the 17 counties in Nevada. Shouldn't we spend a little

time talking about school, about education? Shouldn't we talk about what helps our public educational system instead of tearing down our public educational system?

I don't know about how other people feel. But for me personally, other than my immediate family, the most important people in my life have been my teachers. They have altered the way that I think. They have changed who I am. Why did I go to law school? There was no lawyer in Searchlight, of course; none in Henderson where I graduated high school. I went to law school because of Mrs. Robinson, a part-time counselor and part-time government teacher who pulled me out of class when I was in junior high school. She said: We have looked over all your grades and all your aptitude tests. You should go to law school.

That was it for me. Mrs. Robinson told me I should go to law school, and I was headed for law school. That was it. I was going to become a lawyer. I had never been to a courthouse, never met a lawyer. But she told me I should go to law school.

I feel very strongly about the positive nature of our public educational system. I think we belittle teachers far too much. Teachers are so important. We have to give them better tools with which to teach. We need to build smaller schools. I called Bill Gates about a month ago. Bill Gates gave a very large grant to New York's public school system. The reason I called him is because he is getting it right. His money is only going for the development of small schools.

The problem in America today is not large school districts; it is large schools. Clark County is an example. We have several high schools that are about 5,000 students large. Why do they build large schools? Because they are cheaper to build.

We know the learning environment in a very large school is extremely difficult. We need to come up with some way of having school districts build smaller schools. It has worked before. One of the leading advocates of small schools in America is a woman named Deborah Meyer. She did wonderful things in New York. Bill Gates, as I said, is a very generous man, and he is spending some of his great wealth in making kids' lives better. He will do that with the smaller schools he is helping to build, to develop. That is so important.

There are areas in this bill that deal with education in many different ways, grants to different educational institutions, things of that nature, that certainly help what we do with education in America today. As a result, it is important we talk about that.

This bill probably needs to be talked about a little more anyway. It has wonderful people on the committee, the subcommittee. There is tremendous work that is done. As I indicated, the bill covers many different areas. I talked about some of them.

When we talk about education, one of things this bill deals with is the National Childhood Vaccine Injury Act, which is so important. The whole section we have been dealing with in the Justice Department is extremely important in this bill. I haven't talked about it, but the Antitrust Division is so important.

I know my friends in the insurance industry won't like this, but talking about antitrust, I think one of the areas that needs to be changed and we need to deal with in legislation is to have the insurance industry subject to the Sherman Antitrust Act. Most people don't realize that the only area other than professional major league baseball that is not subject to the Sherman Antitrust Act is insurance. That came about during the Depression by Nevada Senator McCarran and a man from Alabama, Ferguson. They said that things were bad during the Depression and that insurance companies should be able to meet and—this is my word, not theirs—conspire, be able to fix prices and not be subject to the Sherman Antitrust Act.

That has been the law for almost 70 years. It is not a good law. Insurance should be no different than any other business. They should be subject to antitrust laws. They could live within the confines of that law just like other businesses do. There is no reason the insurance industry is not part of regular American commerce. They should be subject to the Sherman Antitrust Act. That is why in this bill, in the Antitrust Division, there is a huge amount of money spent there. This year it will be about $142 million. That is a ton of money. It is for a good cause. But I wish that the insurance industry was subject to the antitrust laws of the country.

This bill funds, for example, the national census. The census is critical to assuring taxpayer dollars are distributed fairly in Federal programs. This is so important to Nevada because, as I have already discussed, it is a rapidly growing State. Because we are a rapidly growing State, if you don't change the numbers that you base Federal program assistance on, you don't do it until 10 years has gone by, we suffer greatly. The State of Nevada is the fastest growing State in the Union. The census figures are important to us. But we wish they would be reviewed more often than what they are.

The condition of many public schools is dismal. We have a high dropout rate in Nevada, one of the highest in the country, one of the lowest graduation rates. This is nothing I am proud of, but it is a fact of life. We need to be working on this. And we don't do well in national reading, writing, and math tests. Per pupil, Nevada spends less money on students than all other programs. Why? Because we spend so much money building schools.

The former superintendent of schools, a wonderful man who was superintendent of schools for many years, said he was more of a construction superintendent than an education superintendent. That is the way the new superintendent is. Carlos Garcia, the new superintendent of schools, spends far more time in construction-related problems than he does in education because he has to build more than a new school every month.

So there is no easy way to fix the problems facing Nevada schools, except help us with school construction. We need it and other States do. Schools are primarily the responsibility of individual States. We know that. There is only so much the Federal Government can do to help, but the education of our children must remain one of our top priorities because they are the future of this country. We have to give them the tools they need to succeed. We have tried to do that with Leave No Child Behind.

I believe many of Nevada's problems stem from the fact its high growth rates prevent it from receiving its fair share of Federal education funding.

Nevada, and Las Vegas in particular, has the fastest growing population in the entire Nation. As a result, we find ourselves in a never-ending race to fund the growing demands for education. That is why the legislation this bill deals with, the census, is so important to us. Our schools struggle each year to make room for new students. Despite all this, Nevada is last in Federal per-pupil funding. It is because of the cost of building new buildings.

A recent Las Vegas Review Journal article makes a comparison between Las Vegas and Buffalo, NY.

According to the article, Buffalo received about $716 in low-income title I funding per child, while Las Vegas received $454. Why? It was distributed, despite the fact that Buffalo loses about 2,000 students per year, while Las Vegas had to build more than a dozen new schools last year to make up for growth. Those schools are too big, as I have already indicated.

I want to reiterate that the high growth problem is unique to Nevada. But it is interesting, schools in other States also face budget restraints for high population rates. Despite the rapid growth, the Census Bureau does not use statistics to reflect that expansion. The formulas that allocate Federal education dollars usually don't factor high growth rates into the calculations. So schools in Nevada and elsewhere are challenged even under the best fiscal conditions.

One can imagine how difficult the situation is in a time of record Federal and State budget deficits like we have experienced. All States deserve their fair share of Federal education dollars. It is an issue of fundamental fairness. I hope we will address the problem of proportional funding in a comprehensive manner the next time we revisit the No Child Left Behind Act, and I hope that is soon.

In the meantime, I hope we can correct a similar flaw in the way we fund

Head Start. Throughout its 38-year history, Head Start has helped put millions of at-risk children on a path to success, giving them the social and academic skills they need to succeed in elementary school. It is a text book example of a Federal program that has worked. Really, Mr. President, it is a holistic approach. This holistic approach addresses many of the underlying causes of poor academic performance by providing medical services and guidance for parents of at-risk children. But State budget crises have placed Head Start programs under siege, along with all other aspects of public education, and programs in high growth States are among the hardest hit.

That is why I introduced the High-Growth Head Start Assistance Act along with Senator ENSIGN. That bill would reward high-growth States, such as Nevada, for the commitment to Head Start by ensuring that programs in their State receive their fair share of Federal funds. Congresswoman BERKLEY introduced a similar bill in the House. I applaud her for her leadership on this issue.

This bill would make a difference in the lives of thousands of at-risk children in Nevada and across the country, and it would address the problem of inadequate census data. Most important, it represents a small but significant step forward, fulfilling the promise we made 2 years ago to leave no child behind; and in those 2 years, we have left lots of them behind.

As we continue consideration of the Commerce-State-Justice bill, the bill which funds our census, it is critically important to keep in mind the impact this small program has on the fundamental fairness of other important programs like education.

Mr. President, one of the things that I want to talk about is what has not been done in this legislation as it represents tribal trust fund litigation. This bill provides $3.06 million for tribal trust fund litigation. But it also directs the Department of Justice to seek reimbursement of these funds from the Bureau of Indian Affairs.

As we consider this bill, it is important to remember how and why these litigation expenses have been incurred—and the injustice done to Native Americans.

Filed over 10 years ago was Cobell v. Norton, a class action lawsuit in the district court in Washington, DC, to require the Federal Government to account for billions of dollars that belong to approximately 300,000 American Indians that has been held in trust since 1887.

On September 25, 2003, the U.S. district court, Judge Royce Lambert, ruled that the Government breached its trust obligations and has directed the Secretary of the Interior to conduct a full accounting of the trust money.

The U.S. has spent nearly $1 billion on this case.

There is no argument that the U.S. Government failed the Indian people in managing this trust in a debacle that has spanned more than 100 years.

Nobody disagrees that at least $13 billion has been generated from Indian lands for the life of these trusts—without interest. That is a huge number. At least $13 billion has been generated from Indian lands for the life of these trusts—with no interest.

Yet none of this money has ever been accounted for by the Department of the Interior.

We don't know how much of this money has reached the beneficiaries. We don't know how much money shall be allocated to each beneficiary. But we do know that we have obtained this extraordinary resource from the Nation's American Indians, without an accounting.

Moreover, in the Department of the Interior appropriations bill, language has been attached that will stop the accounting of these funds.

As Senator DASCHLE stated on the floor during consideration of the Interior appropriations bill, the rider in place tells the court how it must construe existing law and denies account holders a full accounting of their trust fund moneys and other assets.

I don't understand how, in one appropriations bill, our Government can block all litigation of this matter and, in another appropriations bill, fund the litigation of this matter. They fund it not within the Justice Department, but out of the poor Bureau of Indian Affairs, which is broke to begin with.

Rather than enacting legislation that is not only unconstitutional, but also will serve to delay an accounting of these trust funds, we should address this in a fair manner. I do believe there are some who are doing this only to delay the accounting of these trust funds, and for that reason only.

Once tribes have a full accounting of their own trust funds, they should be permitted access to those funds. I have tried to do this for the Western Shoshone people of Nevada in the Western Shoshone distribution bill, which passed out of the Senate earlier last month. This will distribute almost $150 million to the Western Shoshone people.

Last year, the Senate unanimously passed this bill that will, at last, release the funds that the U.S. has held in trust for the Western Shoshone people for almost a quarter century. But the House was unable to complete its consideration of the bill before Congress adjourned.

Historically, the Western Shoshone people have resided on land within the central portion of Nevada and parts of California, Idaho, and Utah. For more than a hundred years, they have not received fair compensation for the loss to their tribal land and resources.

In 1946, the Indian Claims Commission was established to compensate Indians for lands and resources taken from them by the United States

In 1962, the Commission determined that the Western Shoshone land had been taken through ''gradual encroachment.''

In 1977, the Commission awarded the tribe in excess of $26 million. The United States Supreme Court has upheld the Commission's award. It was not until 1979 that the U.S. appropriated over $26 million to reimburse the descendants of these tribes for their loss.

Like the hundreds of thousands of American Indians who are entangled in this accounting mess, the Western Shoshone are not a wealthy people. That is an understatement. A third of the tribal members are unemployed—a third. For many of those who have jobs, it is a struggle from one paycheck to the next. Wood stoves often provide the only source of heat in their aging homes.

Like other American Indians, the Western Shoshone continue to be disproportionately affected by poverty and low educational attainment. The high school completion rate of Indian people between the ages of 20 and 24 is dismal.

The American Indians have a dropout rate of 12.5 percent higher than other Americans.

For the Western Shoshone, the money contained in the settlement funds could lead to drastic lifestyle improvements.

After 24 years, the judgment funds still remained in the U.S. Treasury. The Western Shoshone have not received a single penny of the money—their money. In those 24 years, the original trust fund has grown to well over $144 million.

It is long past time that this money should be delivered into the hands of its owners. The distribution bill will provide payments to eligible Western Shoshone tribal members and ensure that future generations of Western Shoshone will be able to enjoy the benefit of the distribution in perpetuity.

Through the establishment of a tribally controlled grant trust fund, individual members of the Western Shoshone will be able to apply for money for education and other needs within the limits set by a self-appointed committee of tribal members.

I will continue my ongoing work with the members of the Western Shoshone and the Department of the Interior to help resolve any current land issues.

The Western Shoshone have affirmed and reaffirmed their choice to have these funds from their claim distributed without further delay.

They have voted twice—and we have voted unanimously twice—they voted 94 percent twice to decisively distribute this money. Members of the Western Shoshone gathered in Fallon and Elko, NV, in May of 1998. They cast a vote overwhelmingly in favor of distributing the funds. Again, about 4 years later they cast a vote overwhelmingly in support of the distribution of the judgment funds at a rate of

100 percent per capita—again, only a handful.

The final distribution of this fund has been lingering for many years. I have been assured by the House Members from Nevada that they will do everything within their power to push this bill through the House. We need it out of the House.

The Western Shoshone distribution bill is an example of legislation that—unlike the Indian trust rider that was attached to the Interior appropriations bill—will actually benefit American Indians across the whole Nation.

Mr. President, the legislation that is before this body is important. Why is the Senator from Nevada spending now about 2½ hours, or thereabouts—what time was the bill laid down, by way of parliamentary inquiry?

The PRESIDING OFFICER. At 1:16 p.m.

Mr. REID. It has been 2 hours and 35 minutes or 36 minutes. Mr. President, in about 25 more minutes we will be past the so-called Pastore rule. After that, I don't have to talk about the bill. I can talk about the color of the ties. I can talk about the ties in this room. I can talk about the color of people's hair. I can tell how good these court reporters are. I can talk about anything I want. For the next 25 minutes or so, I have to stick with this bill. I am happy to do that.

One of the provisions in this bill is global warming. One of the agencies funded in this bill is the National Oceanic and Atmospheric Administration, or NOAA, as it is called. The bill funds critical research into climate change or global warming. As we consider this bill today, I would like to say a few words about global warming and this administration's stewardship of the environment over the past 2½ years.

This administration's environmental record has gone from bad to worse. The latest bad decision is the rollback of the Clean Air Act which was enacted under a Republican administration more than 30 years ago and has improved the air we all breathe. EPA announced several months ago it is relaxing Clean Air Act requirements to apply to some of our aging powerplants. This will result in more pollution and more greenhouse gases contributing to global warming.

Then when we thought it couldn't get any worse, just last week we learned that the Environmental Protection Agency is likely to drop a number of lawsuits in cases involving powerplants that are polluting our air and contributing to global warming. Global warming is real.

I so admire the senior Senator from Arizona, Mr. MCCAIN. Senator MCCAIN and I came to Washington together in 1982. We were freshmen Members of the House of Representatives. I go to the congressional prayer breakfast—not all the time; my schedule is as difficult as everyone's. I have been to the prayer breakfast in the House and the Senate on a number of occasions. I will never forget the prayer breakfast I went to in the House of Representatives which was led by JOHN MCCAIN. I will never forget the power of that morning.

JOHN MCCAIN talked about the first time they were able to get together and sing Christmas carols. This man spent—I don't know the exact time—about 7 years in a concentration camp. The vast majority of that time was in solitary confinement. This is a man who could have gotten out early. His father was the commander of the naval operations in the area of Vietnam, Admiral McCain.

JOHN MCCAIN could have gone early because of his father. They said to him: You can go. He wouldn't leave without the rest of them.

He was hurt when his airplane went down. His shoulders were broken and a lot of other damage. He was tortured unmercifully. When his shoulders healed, they broke them again.

I only lay this foundation to show that JOHN MCCAIN is a courageous man. As we know, he can be a pain in our side because he doesn't always do what we want him to do, Democrats or Republicans. It doesn't matter to me. It does not take away from my admiration of this American hero. He may do things that I think are wrong, but he does things that he thinks are right. He never does things that he doesn't believe in, as difficult as they are for the Members of the Senate to sometimes understand.

This is a man of great courage and, I have come to learn, of intellect. A demonstration to me of the strength of his convictions is what he has done on global warming. But for JOHN MCCAIN, we would not have debated for 2 days global warming. He forced us to do that. I, of course, would love to do it. I am on the environment committee. I have been chairman of that full committee twice.

Because of JOHN MCCAIN's leadership, the senior Senator from Arizona forced the leadership of this Senate—by the way, he is a Republican—he forced his own leadership to bring this bill to the floor. It wouldn't have come to the floor otherwise.

JOHN MCCAIN knew that the lobbyists, the big powers—the automobile manufacturers and oil companies—he knew he wouldn't win, but he wasn't afraid of a fight because he knows, as I know and the vast majority of Americans know, that global warming is upon us. We saw that with the graphs, charts, and pictures of the icecap shrinking before our eyes. We know. We talked about global warming.

I hope the issue is big enough that we should be talking about global warming. I would like to start this coming Wednesday, the day after tomorrow, at 6 o'clock and go until midnight on Thursday. The people of America would appreciate that more than talking about three judges who didn't get promotions, who are making about $1 million a year, one of whom is making half a million dollars a year. That would not be a bad thing to do with our time.

JOHN MCCAIN said a few weeks ago when he displayed the dramatic photographs of our planet that all we have to do is believe what we see with our own eyes. As the administration made a bad decision to weaken the Clean Air Act, it has made a disastrous decision to ignore the problems of global warming.

I spread all over the record of this Senate my appreciation for the work of Senator JOHN MCCAIN on this issue alone. He is one rung ahead of me on seniority. Why? We came at the same time. We had the same service in the House. Why? Because the State of Arizona has more people in it than Nevada. That is why he is one notch ahead of me.

I have already made very clear how much I admire JOHN MCCAIN and how much I appreciate his bringing global warming before our eyes. Ignoring global warming isn't merely a bad decision; it is also a broken promise to the other nations of the world and a broken campaign promise to the Americans.

The administration talks about the difficulty of reducing greenhouse gases, but it isn't even willing to take the easy step of requiring our vehicles to be more fuel efficient. We need leadership from the White House. Reducing fuel efficiency is important. Requiring greater fuel efficiency would not only reduce the gases that cause global warming but also help us break our dependence on foreign oil which threatens to undermine our national security.

When it comes to producing electricity, we need to encourage the development of renewable resources, such as geothermal power, solar power, and wind power.

After I finished law school and moved back to Nevada, my wife and I decided to take a vacation. It was a wonderful trip. We had our little Valiant station wagon. We put our two little children in the back seat. I am sorry to say in those days there may have been seatbelts there but people did not use them. The kids laid down in the back of the station wagon and played around. We would never do that now but we did it then.

It was a wonderful, pleasurable trip we took to Yellowstone. I can remember lots of it, but what was most impressive to me about Yellowstone National Park was Old Faithful. A magnificent national treasure is the geyser we call Old Faithful. It was only a few months ago that I had a chance to go back. It had been many decades—I should not say many decades but it had been decades since I had been there. I had a chance to return to Yellowstone.

I only had a part of a day. I was doing something in the Big Sky area for Senator MAX BAUCUS and we had a little downtime. We had a few hours. I was asked: Where do you want to go? I want to go see Old Faithful.

So we went to the geyser farm, as I call it, and it was tremendously interesting again. The geyser erupted a few

times while I was there, spewing thousands of tons of boiling water, 18 stories into the air, as high as an 18-story building. It is power. It is awesome. But even more impressive than this power is its reliability. Since man first set eyes upon Old Faithful, it has erupted without fail every 90 minutes or so, give or take a few minutes but very close to that. It is a marvel of nature, but it is not an isolated phenomenon because it sits among the largest concentration of geysers in the world.

When we went there this last trip, we took a little stroll. They have a little wooden path people can walk around in the geyser farm, and it was interesting because the buffalo would come and lay right near one of the geysers. We asked the guide who was taking us around, why would a buffalo walk through these people and lay down by a geyser? The reason was it kept the bugs off of him. Whatever insects bother the buffalo, they do not do it around all of that steam and stuff. So it is a marvel of nature, and they are studying it all the time.

Out west, though, we are surrounded by sources of reliable power—mighty rivers, the brilliance of the Sun, the force of the wind and the heat within the Earth itself. These renewable resources can free us forever from energy shortages and unexpected price increases.

More importantly, they can produce reliable electricity without pumping more carbon into the atmosphere, carbon that contributes to global warming. As Nevada and other States begin to harness their power, we are forging a path that the Nation should follow.

The geysers that we saw at Yellowstone come from deep within the bowels of the Earth. In Nevada, we are fortunate to have not geysers but we have a lot of very hot water that is under the surface of the ground. During the times of the pioneers, these really became a problem until people understood what was going on. For example, on one of the immigrant trails that was traversed often, they would leave what is now Utah and come across an awfully difficult desert and they would get up around the place we now call Gerlach and they would see this beautiful water, big pools of water. The early travelers would rush to that little pond, that pool of water as big as this circle here that covers the members, the staff and the Presiding Officer, and they would die. It was boiling. It was hot. They were dying of thirst. They would rush in and they could not drink it. So they learned, as they had to, as Senator MCCONNELL said earlier today; they would have to drain the water from the big pool and let it cool before the animals could drink it and the people could drink it.

We have hot water that goes from Gerlach clear down below Reno to the Carson City area and beyond, and we have geothermal power that has already been developed. We are known in Nevada as the Saudi Arabia of geothermal, but the problem is that the tax incentives for geothermal and solar simply are not there. It is for wind. Wind is as cheap now to produce as using standard fossil fuels. We hope in this Energy bill that is being worked on that the tax section will allow geothermal and solar to have the tax credit that wind has. If we did that, it could change things dramatically.

The President is talking about hydrogen. Hydrogen means nothing if we cannot produce it by alternative energy. We have to produce our hydrogen fuel by either wind, the Sun, or geothermal. Otherwise, we are just burning huge amounts of fossil fuel to take care of a problem that will only create more problems. So in Nevada we are looking forward to the tax incentives so we can cheaply produce electricity.

Senator ENSIGN and I have worked hard to stop the dangerous nuclear waste coming to Nevada, Yucca Mountain. We want the State to be a proving ground for renewable energy. Renewable energy is good for Nevada because it will create jobs and help our consumers. It is good for America because it will slow global warming. The work that is being funded in this appropriations bill includes convincing evidence that global warming is real. What more is needed is hard for me to comprehend. We have studied too much.

We have all heard the story about the frog that is placed in a pot of water. So far, so good. When the water is brought to a boil, the frog does not know it, so the water keeps getting hot until it scalds him. I hope, unlike the frog, we take notice of global warming before it is too late.

Global warming is here. It is not only like the frog, it is like the ostrich that hides its head in the ground not seeing what is going on around it.

Before I start another section talking about this bill, I want to again remind everyone what is going on today.

The PRESIDING OFFICER (Mr. TALENT). If the Senator would suspend for a minute, the Senator asked before at what point the bill was laid down. The Chair can now inform the Senator the bill was laid down at 1:16 p.m.

Mr. REID. I appreciate that very much.

One of the things I have been concerned about for many years is the pay of judges in the Federal judiciary. I have had the good fortune of sending to Presidents the names of attorneys who are now Federal judges—very proud of every one of them. I have worked with Senator ENSIGN, during the time that President Bush has been President, in sending judges that Senator ENSIGN has had me take a look at.

We have a fine Federal judiciary in the State of Nevada, those who Senator ENSIGN and I have worked on and those who have come before. I think the thing that concerns me, though, about those judges, they should be paid for. To get the high quality of people we want to be Federal judges is not easy. Many people who I went to, Senator ENSIGN went to, who we thought would be good Federal judges, could not do it simply because they could not afford to do it.

This bill provided for the funding for the judiciary. I am pleased that the bill provides a 16½ percent pay increase for judges. That helps make up for the fact that judges have not received and do not receive annual cost-of-living adjustments. The 16.5 percent increase helps to right this wrong.

I would like to take a few minutes during our consideration of the bill to discuss the important issue of judicial pay. Before I came to work in the Congress, I practiced law. I am proud to be a lawyer. I have great respect and appreciation for the law and those involved in the judicial process. The very reason there has been such a great deal of debate on Federal judicial nominations is precisely that these positions are so important to the administration of a fair and effective legal system.

The individuals chosen to serve on our Federal bench make lifetime commitments to public service. Increasingly, however, that commitment comes at a fiscal price. In fact, the real pay for these jobs has declined drastically. The compensation for Federal judges has declined by 25 percent in the last three decades.

In testimony before the National Commission on the Public Service, Supreme Court Justice Stephen Breyer stated that while the real pay for Federal trial court and appellate court judges has declined by about 25 percent, there has been a 12.4 percent increase in real pay that the average American worker has enjoyed.

Justice Breyer also drew attention to the fact that since 1993, when Congress last comprehensively revised Federal salary statutes, real judicial pay has declined by approximately 10 percent.

How can we continue to attract the best of the best when low salaries are offered for lifetime tenures? The answer is simple. In order to continue to attract and retain the most talented men and women to the Federal bench, the salaries must be raised. The Founders recognized that Federal judicial compensation was integrally tied to judicial independence.

In 1989, Congress linked the salaries of its own Members to senior executives and to Federal judges. As a result, Federal judges did not receive cost-of-living increases for several years in the 1990s. Some of my colleagues may say there is no need to maintain ''inter-branch pay parity.'' However, there are fundamental differences between our respective branches.

While a judge and Congressman may each make the same salary, they do not each face the same financial future. In fact, the Federal bench is threatened by some of the best and brightest choosing to take early retirement as they are wooed away by the private sector.

Even the Justices of our highest court, the U.S. Supreme Court, make far less than leaders of educational institutions and not-for-profit organizations. Salaries of Federal district court judges and deans of prestigious law schools used to be competitive with one another. Not today. Today, according to a survey conducted by U.S. News and World Report, the average salary for law school deans is $301,639, about twice as much as we pay our Federal district court judges.

I believe the deans of our schools are important but no school—Harvard, Yale, Stanford, none of the big name schools, none of the small schools—less prestigious schools, I should say—none of them has a dean who is more important than any Federal district court judge, none of them.

We pay our judges substantially less than either England or Canada. Our Constitution creates lifetime appointments to the Federal bench. Many men and women who accept these positions are giving up far more lucrative careers. Some suggest we may rely upon our judges' devotion to public service to keep them at their posts while we allow their purchasing power to dwindle. However, we should rely on their public-spiritedness only so far. Although they are aware the salaries are not of the level these individuals could demand in the private sector, it is only fair that they be adequately compensated.

Legislation to increase their salaries and sever them from yearly congressional authorization restores both fairness and the appeal of public service to the Federal judiciary by improving compensation. Better compensation means better quality judges, and quality judges instill greater public confidence in the Federal courts. Raising Federal judicial salaries by 16.5 percent and limiting the annual congressional authorization of cost-of-living adjustments for Federal judges helps to secure judicial independence.

Those who support the increase in compensation for Federal judges include the American College of Trial Lawyers, the United States Judicial Conference, the American Bar Association, the National Commission for Public Service, and many others.

In an editorial on May 5 of this year, the New York Times wrote:

The increase is warranted to make up for the erosion in judicial pay caused by inflation and Congress's repeated withholding of cost-of-living adjustments that are supposed to be routine. A report in January by the National Commission on the Public Service, a study group led by Paul Volcker, the former chairman of the Federal Reserve, said that the purchasing power of federal judicial salaries had dropped 24 percent since 1969. It said the decline was ''arguably inconsistent with the Constitutional provision that judicial salaries may not be reduced by Congress.'' A year ago, the Supreme Court declined to accept a case raising that issue. But it should not take a lawsuit to persuade members of Congress to treat the judiciary fairly. The government cannot match the salaries offered by big-time law firms. But to recruit and retain quality judges—and for the sake of fairness—Congress needs to provide salaries that bear a reasonable relationship to other professional opportunities. As part of the package, judges should be required to forgo privately financed junkets that cast an ethical cloud on the courts, as Senator Leahy has previously proposed. These are matters that transcend the ongoing partisan battle over President Bush's hard-right judicial nominees.

As we consider the funding bill for our Judiciary here today, I think it is important to highlight the issue of judicial pay.

This bill takes an important first step of providing a pay increase to make up for the many years that judges received no cost of living adjustment.

Going the extra step of delinking COLAs from congressional pay would benefit the administration of justice for the judges that serve our country.

Mr. President, the 3 hours are up. We are no longer bound by the Pastore rule. I can talk about anything I want to talk about now, but the first thing I want to talk about is the Senate schedule.

I participated in a press conference on Friday right upstairs. I thought we laid out our case pretty well—Senator DASCHLE and I and Senator STABENOW.

We were very concerned about what was going on in the Senate. I repeated, and I will continue to repeat, it seems so unfair that we would work so hard and cooperate so much to make sure that, at this stage, 10 of the 13 appropriations bills would pass. That couldn't have been done without us.

We were willing to work to complete the other three within the matter of the next few days, and suddenly we are struck with the 30-hour performance that will begin Wednesday at 6 o'clock where we will spend 30 hours on four people we have turned down; lamenting to you how bad things are in America today because Estrada, Owen, Pickering, and Pryor have been turned down. Isn't that just awful?

I was concerned about talking about unemployment, the impoverished, the uninsured, the budget deficit, the national debt, and so we, among other things, demanded we be given half of that 30 hours.

Since that press conference and the unanimous consent agreement that was entered while I was here in the Chamber, we get half of the 30 hours.

I think it is foolish that we are spending 30 hours, but we will take our half and talk about whatever we feel is appropriate.

During the press conference, I said I thought this was the most amateurish leadership I had seen in my years in Congress. I think name calling does not serve the Senate well. Perhaps this Senator could have used terms more descriptive. I didn't want anyone to think we have to resort to name calling. I spend a lot of time on this floor, and I don't want anyone to think less of me for name calling. If I offended the Republican leadership—that is, Senator FRIST and Senator MCCONNELL—by calling them the most amateurish leadership I have seen since I have been in Congress, I apologize for that. I apologize. They know and I know why I was upset. I try never to let my emotions override my mind, but perhaps it did that day. I have read the news articles from all over the country. The press loved ''amateurish,'' the word I used. I apologize in front of the Senate and millions of people by saying I shouldn't have used that word. I don't want to have to resort to name calling.

As I have said, I think it is absolutely wrong that Senator FRIST allows this to go forward. He has his reasons for doing it. I have talked to him. I disagree with those reasons. But please strike from everyone's mind the fact that I used the words ''the most amateurish leadership'' since I have been in the Congress. I may have thought so for those few minutes I was up there, but it probably wasn't a very good thought.

Again, I apologize. I hope I didn't hurt anyone's feelings. I don't think I can say any more than that. I strike that, but everything else I said up there was just fine.

We have a lot of work to do here.

Why am I on the Senate floor today? I repeat I am here to show the Senate is a body where we have to work together. We have to work together. No one can demand that we be here to vote when no one tells us when the votes are going to take place or what the votes are going to be on. You can't do that. Everything done in the Senate, with rare exception, is done by unanimous consent. It means all 100 Senators have to say, That is OK, let us go ahead and do that. We spend a lot of time here dealing with individual Senators who do not like when we are going to vote, do not like when we begin debates, do not like the makeup of committees—all kinds of things. Everything has to be done by unanimous consent.

I hope when we finish here today people will better understand that Members over here want to work together. We want to be part of good things to happen in the Congress of the United States. But don't take us for granted. Don't think we are unimportant. Don't think we can be pushed around with no say in what goes on around here, because we have a say in what goes on around here. We can do things like I am doing today.

Some of my friends on the other side of the aisle said, Well, we have been told we will have a vote or two early and we can go back to our parade. People who serve in the western part of the United States can't do that. They can't go home today. Right now, if I left to go back to Nevada, if I were lucky enough to get a plane—there is one that leaves at 5:30—if everything left on time, I could get out there by 7:30 or 7:45 tonight. Remember, that is a 3-hour time difference. Coming back this way, it is almost impossible. Coming back this way, if you leave at noon, it

is 3 o'clock back here, and you get back here at 8 o'clock at night.

We need to be a part of what is going to go on. If we are going to have votes on Monday, tell us what the votes are. Somebody can make a choice about whether they want to make that vote or not.

Tomorrow is a holiday. It is a legal holiday. We originally thought we were going to work from early in the morning to late at night and get our work done around here. But now we don't know. We don't know. We have to debate 30 hours—we have to rest up for that—starting day after tomorrow at 6 o'clock and spend many hours—30, to be exact—talking about the 4 judges who didn't get the job they wanted.

There are a few more things we need to talk about. One of the things which is important is that on Friday, August 29, as most Americans started a 3-day Labor Day weekend, President George Bush announced he was expanding the United States policy known as the global gag rule which denies United States family planning funds for foreign governmental organizations that use their own funds to counsel, perform, and advocate abortion. Apparently, the President didn't care the Senate voted just 2 months earlier to overturn this rule.

Remember that this wasn't to do abortions but just to educate about abortion. The President didn't realize or didn't care the Senate had voted just 2 months earlier to overturn this rule. Despite that vote, the President decided to expand a policy that violates free speech and endangers the lives of women around the world.

Just days after the President acted to expand this policy, the Senate Appropriations Committee reported my amendment to the Commerce-Justice-State bill and voted to block the expansion of the global gag rule. Prior to the President's action to expand this policy, the gag rule applied only to groups that received grants from the United States Agency for International Development; that is, their family planning program.

During consideration of the State Department's authorization bill in July, the Senate debated this policy and determined it is inconsistent with American values of free speech, and we adopted an amendment offered by Senator BOXER to rescind the rule. The President acted to expand this policy so it would apply to not just one program at the Department of State but to all population programs at the State Department. It is impossible to determine the impact of expansion of the global gag rule at this point in time, but the consequences of the original policy are well documented. Here are some examples.

No. 1, the Family Guidance Association of Ethiopia is the largest reproductive provider in Ethiopia. It operates 18 clinics, 24 youth service centers, 671 community-based reproductive care sites, and hundreds of other sites for health care services. The global gag rule has cost this group more than half a million dollars and has cut off the supply of condoms and other contraceptives even though abortion is illegal in Ethiopia. This group doesn't provide abortion services, but because the organization does not seek to educate policymakers in the country about the role unsafe abortion plays in Ethiopia's staggering mortality rate, it is unable to agree to the gag rule.

Mr. SCHUMER. Mr. President, could I ask my colleague from Nevada to yield for the purpose of a question?

Mr. REID. I will yield to my friend for a question as long as the question doesn't take more than 1 minute and without losing my right to the floor.

Mr. SCHUMER. I want to first tell my colleague I have been watching him in the other room, and he has been doing a masterful job on the CJS bill, and now on what has happened in the first 1,000 days of the Bush Presidency.

An area of particular concern to me, which I know my colleague has touched on, has been the judges. I simply ask my colleague if he says the judicial vacancies—it is on the chart. I can't read it, but I think it is down from 9 percent to 4.7 percent. He has been around here a lot longer time than I have. But does my colleague recall a time when we moved so many—knowing his knowledge of the history of the Senate—judges so quickly and when any President could have gotten such a high percentage of the judges which he has asked for? Does my colleague agree with this? He might want to talk about this at some point. He was talking about the gag rule, but I was so interested in what he said on judges I wanted to come to the floor.

It is ridiculous, when 168 of 172 judges have been approved, to call the minority ''obstructionists'' given the record they have. I am hearing from many people in New York that we are letting too many judges through.

Mr. REID. I am happy to respond to my friend. I will answer my friend, the distinguished Senator from New York, who is the ranking member of the subcommittee that has the burdensome job of weighing the merits and demerits of each of these judges. It is a difficult job.

The Senator has sifted pretty hard. There have been 168 judges come through your subcommittee of the full committee that have been approved. I say to my friend, the mystery as far as I am concerned is we are going to spend 30 hours starting Wednesday night and going until Thursday at midnight on 4 judges who have not been approved by the ranking member's subcommittee and the full committee.

I cannot imagine how we could do better. We have the lowest vacancy rate in some 15 years. We have approved, I repeat, 168 judges.

My friend is absolutely right. This side of the aisle is being criticized because too many bad judges are getting through. We have made a decision to only take the worst of the worst. That is why we stick together on these so well. We do not turn down everybody. We turned down less than 2 percent.

As I said earlier today, rather than turning down 2 percent, if we turn down 1.5 percent of the judges, would that cut the time down for taking away from valuable Senate time to maybe 25 hours? If we cut the rate down to 99 percent, maybe they would cut it down to 15 hours. Does this mean the Constitution of the United States says we should approve every judge they give to us? We are the minority. There are 49 of us. It does not take a mathematical scientist to tell you they vote en bloc. Once in a while we get a courageous Senator who joins in judges, but that is a rarity.

We have under the rules of this body something called cloture. It is used all the time. It has been used with judges before. We have used very discriminately, rarely, our ability to block judges. We have done it four times. That does not prevent them from getting a vote on the judge. They just have to get 60 votes. They have to get 60 votes. They have not been able to do that. That is why they are lamenting these four.

I don't know if the Senator from New York was here earlier today when I talked about the huge number of unemployed we have in America today, approaching 10 million. Wouldn't it be nice if we spent that 30 hours, or part of it, talking about the unemployed in America today instead of the 4 people who have good jobs? Miguel Estrada makes over half a million yearly, the others make about half a million a year. They are judges and have jobs. None of them are out of work. Rather than spend 30 hours on people who have jobs, shouldn't we spend time on people who do not have jobs? Would it not be better that we spend some time talking about minimum wage? I have talked about it a little bit today. I had to be careful what I talked about the first 3 hours; it had to be directly on the bill. As I told the staff earlier, later I may want to talk about the color of the ties and the color of her pretty shoes. We can talk about all kinds of things. Now the rules are that I can talk about anything.

One of the things that is not just anything is minimum wage. Wouldn't it be nice if people who went to work in interstate commerce in America, which covers it all, got at least $5.30 an hour, $5.50 an hour, or $6 an hour? The rate now is $5.15. They will not give us a vote on that. I would hope we could spend part of that 30 hours on minimum wage.

My friend from Michigan is here. The Senate is a much better place now that we have women in the Senate. I speak from experience. It is a much better place.

Minimum wage is not just employment for a kid flipping hamburgers at McDonald's. Sixty percent of the workers who draw minimum wage are

women, and a majority of the women need that money for their families. Would it not be nice if we spent time doing some work for our hard-working people who are doing everything they can to make a living? Most of these minimum-wage jobs certainly have no benefits, no pension benefits, they have no medical benefits. They are bad jobs, but they are jobs. They are jobs the American people need.

It is important we do something that is worth the dignity of the Senate. I don't know how the history books will report this. Here we are, a country that is staggering in debt. We started off with a national surplus when Clinton left office of over $7 trillion. We have now a debt of $5 trillion. When President Clinton was President the last 3 or 4 years, we were actually spending less money than we were taking in. We were paying down the debt. Now we are building the debt. We will have the largest debt in the history of this country this year, the largest deficit.

The percentage of unemployed is going up; poor people, going up; uninsured, going up. Everything we should be working on is going up, and we should be trying to get these percentages down. But we will not talk about that. We are going to talk about judicial vacancies, which are going down. How in the world can people take the Senate seriously when we have a world that is overcome with pollution, crime, kids cannot go to school, public schools are beaten down, old, decrepit, teachers need help, we have a war going on in Iraq—I don't know how many were killed over the weekend—and we are going to spend 30 hours talking about 4 people the dastardly Democrats turned down. How could they vote against these people? We are going to spend 30 hours. How is history going to account for the time we spent on this?

Mr. SCHUMER. Will my colleague yield for the purpose of one additional question.

Mr. REID. I will yield for a question without losing the floor, and if the question exceeds more than 3 minutes I will retake the floor.

The PRESIDING OFFICER. The Senator from New York.

Mr. SCHUMER. Even on the issue of judges, and my colleague is exactly on point, with all these other problems we have, to talk about four judges sounds like a totally misplaced priority. No one puts it better than he.

I ask one other question about another point. To solve the problem of the judges, when we are not able to come together, it would seem to me, and I ask my good friend from Nevada to comment, it is not that we need more talking. The other side will spend 30 hours talking about this, or now maybe 15 because of my friend from Nevada and his astute parliamentary request. Do you think they will say anything new? We have heard the arguments over and over and over and over and over and over again. No one is going to be educated about this. We all know their viewpoint.

It seems to me, and I ask my colleague this question, what we need on judges is not more speeches telling us what our colleagues on the other side of the aisle think—Lord knows we know that. We do not agree, but we know—but, rather, the President and the leaders of the Senate and the Judiciary Committee, sitting down with our side, and asking, Could we come to some agreement on who the judges ought to be? There is the constitutional role of advice and consent which has existed in this country for a very long time, and I tell the Senator as the ranking Democrat, I am never consulted about judges in New York. By the way, in New York we are filling all the vacancies because we have come to an agreement. I do not get every judge I want or even judges who are philosophically exactly like me, but there is some comity and some agreement.

So my question to my colleague is, Doesn't it seem that if they really want to solve the problem on the judges, instead of spending 30 hours repeating, ad nauseam, the same arguments we have heard over and over and over again, that, rather, they would sit down with us and, in good faith, say: How can we come to some kind of agreement instead of what they do say: My way or the highway. If you don't give us all 172, we're mad. I ask my colleague that question and yield the floor back to him.

Mr. REID. I say to my friend, we take an oath right over here, each one of us. We raise our hand and swear to uphold the Constitution of the United States. I think one of the requirements I have is to advise and give consent to the President, as outlined in the Constitution of the United States. I think it would be better for him, but I do not understand this administration. They just want to jam us on everything.

Now, as I said to the ranking member of the committee the Senator from Vermont, earlier today, I do not like all the judges you guys have put out, quite frankly. I do not like some of them, I say through the Chair to my friend from New York. But I understand it is a winnowing process, and we have only been asked to respond to the worst of the worst.

Now, Miguel Estrada, I do not say he is a bad person. All I say is, if he wants a job, fill out the job application and give us the information so we know for whom we are voting. He could be the nicest guy in the world. I never met him. I have nothing against him personally. But he would have set a very bad standard for this country by just saying: I don't have to answer anything. I don't have to fill out this application. Those papers you wanted, no deal. President Bush said I don't have to answer them. I'm not going to answer them. He said: I don't have to give you that information—even though they have been given before, by Bork and others, Civiletti.

So I say to my friend, we, in turning down Estrada, Owen, Pryor, and Pickering, did our constitutional duty in and what we believed were bad people for good jobs. I cannot, for the life of me, understand why we should spend 30 hours talking about those people. As my friend from New York has said, I have heard the speeches—I have been here—about how they have been maltreated, they want an up-or-down vote—even though we had our own judges, and they did not give us up-or-down votes.

I read something from the majority leader today—he sends out to a lot of people e-mail that I get here, among others—that never has there been a filibuster of a Federal judge before. Absolutely false. Whoever gives the majority leader that information should be embarrassed because it is simply not true. I have been on the Senate floor when there have been filibusters. We had cloture motions filed, and we voted on them.

So we are going to go through this deal on Wednesday and into Thursday—a waste of valuable time that we could be spending on these things that are going up that should have been going down, such as the uninsured.

In my first elective job—I was first a city attorney, and that was an appointed job. Many years ago, my first elected job, in 1966, was to be on the board of trustees of the then-largest hospital district in Nevada, Southern Nevada Memorial Hospital. Now it is a teaching hospital. It was not then.

At that time I learned a lot about people who had no insurance. It was difficult. It is so much worse today. Forty-four million people have no health insurance, and we are not spending time talking about that. It is a serious problem.

Ms. STABENOW. Will my friend yield?

Mr. REID. I will yield in just 1 minute.

The poor: America should not be proud of the fact that, as we speak, the rich are getting richer and the poor are getting poorer. I have nothing against rich people. Before I came back here some would say I was rich. I have spent all my money. I don't have much anymore. But I have nothing against rich people. I think it is fine to be rich. But we also have an obligation, as a nation, to do something to take care of people who are poor through no reason of their own.

The homeless: I left my home today in downtown Washington, and I went out for my morning run. Every morning I go by there, and here are these men, and sometimes women. They are asleep—and they are not asleep, I am sure; they are just waiting for the day to go by as quickly as it can. They are poor people. They have no place to sleep. On occasion I see them roll up their sleeping bags and climb into a car and drive off.

Shouldn't we have some time spent on the Senate floor dealing with those people who are sleeping in the Nation's Capital? There are poor people who are unemployed.

I spent a lot of time here today talking about the unemployed. I talked about a program called Nevada Partners, where they work with people who have never had a job—never had a job. There are lots of people who are not kids who are in their thirties and their forties who have never had a job. They can be trained to work. This organization has had over an 80-percent success rate. They train them, they put them out on the Strip where they have good jobs. They have benefits.

But shouldn't we be spending some time dealing with the unemployed, how we can have more programs like Nevada Partners? It would never have started but for the largess of Kirk Kerkorian, a very wealthy man who wanted to start a program. Then the Government took it over.

Wouldn't it be nice if we spent some time on the budget deficit or the national debt and everything that is shown going up on this chart that we should be talking about? But we are going to talk about something that is going down, judicial vacancies.

So I would be happy to yield to my friend from Michigan for a question only, without losing my right to the floor.

Ms. STABENOW. Thank you very much, I say to my friend and colleague and our leader from Nevada.

Before asking a question, I first want to rise on behalf of the people of Michigan to thank you today for coming to this floor and speaking about what is most important to the people I represent.

As you have said so eloquently, this 30 hours we are going to be doing is about four people who already have jobs who want to be promoted.

Well, in Michigan, we, right now, have over 263,000 people without jobs. They are not up for promotions. They do not have work at all because of, primarily, the loss of manufacturing jobs. They are grateful, as I am, that you have come to the floor to speak about this.

I want to just share with you today a few headlines from the papers. I have been traveling around northern Michigan this last weekend, and everywhere I go—Baldwin, MI, Reed City, Lake City—all around the State I hear the same thing about the loss of furniture makers, the loss of tool and die makers, the loss of other auto suppliers.

Here we have a headline from the Grand Rapids Press: ''2,700 Jobs in Danger as Electrolux Considers Closing Greenville Refrigerator Plant.'' The Holland Sentinel: ''Ford Sets Timetable for Plant Closings.'' Also, GM is laying off one shift in Lansing, my hometown.

Here is another headline: ''Straits Steel Closing Sad News for Plant's 180 Employees.'' From the Ann Arbor news: ''Eaton Plant to Become Condos.'' From the Lansing State Journal: ''Jobless Rate Could Rise in Winter.''

I ask my friend, as we look at what is happening, and as they talk about the change in the growth and the positive indicators in the economy, isn't it true that we are not seeing new jobs created? In many States, such as mine, we are seeing the best paying jobs, manufacturing jobs, evaporating for many different reasons? And isn't that something we should be talking about on the floor of the Senate, the loss of manufacturing jobs?

They cannot just all be in the service industry. We need to make things in this country.

That is what I do. That is what people in my State do very well, and they want to continue. Wouldn't my friend say we should be talking about the loss of manufacturing jobs and the people and the families?

Mr. REID. The Senator is absolutely right. I talked about the State of Michigan earlier today. I talked about my having asked you a question last week, and you responded that 9 million people live in the great State of Michigan. A quarter of 1 million people are out of work that we know of. Those are the people who are still carried on the unemployment rolls. There are probably 150,000 more who have been on so long they are not even counted on the rolls. The Senator is absolutely right.

I finalize my answer to the Senator's question by referring to a letter I received from a woman today from Elko County, NV, a place called Spring Creek.

She wrote that she would work a part-time job or two part-time jobs. She would do anything she could. She has a desperate situation at home. She has a husband who is disabled. He can't move. For every job that opens, 50 people apply for the job. She ends her letter to the President and me by saying:

Gentleman. This is the greatest country in the world. The middle class needs a break. I don't want a free ride. I just want a job or jobs that will supply the basic needs of our family.

That is all that people are asking. They want a job to take care of their families. I am at a loss. I am concerned. What are we doing here, spending 30 hours talking about four people who have jobs, when we have millions, we are approaching 10 million people who don't have jobs? We have millions of people who are not even counted on the rolls anymore because they have been out of work so long.

As I established earlier today, the average person is out of work in America today 5 months. If you lose a job, unless you are real lucky, you are not going to find another job until December, January, February, March, April—if you are lucky. That is the average. But you may have to wait until August or, if you get lucky, you might get one in February.

The point is, why can't we spend time on jobs for people who count, not the four, the big four, so to speak, we are going to spend 30 hours on?

The Senator from Michigan has read the press just as I have: This is something we have to do. We have to have the Senate be the Senate.

What does that mean? Does that mean we have to approve every judge who comes through? If we do that, if we are good boys and girls over here, they will let us go home at night or maybe let us spend a little bit of time talking about the environment. Do you ever think we might want to talk about the environment?

You know the Clean Water Act came to be not because somebody got a bright idea: Wouldn't it be great to have a Clean Water Act. It came to be because the Cayuga River in Ohio kept catching fire, a river kept burning. It was so polluted, it burned. President Nixon and others said: Well, you know—I don't know if he said this, but I am sure they thought it—I don't think that is a good idea to have rivers on fire. Maybe there is something wrong. And we passed the Clean Water Act. A Republican President, Democratic Congress, we passed the Clean Water Act. Why? Because rivers were on fire.

Wouldn't it be nice if we spent a little time on the environment? Pollution is causing kids all across America to have respiratory problems. Asthma is something that kids get. It is something that was rarely heard of in children. Now a lot of them have asthma and all kinds of respiratory problems. I would like to talk about the environment. Maybe not for 30 hours but a few hours would be nice if we had a debate here on that.

Of course unemployment, we need to talk about that. I appreciate very much the Senator from Michigan being as diligent as she is. I have talked a lot today about the minimum wage. Let me give you a few facts about that.

Three million more Americans are in poverty today than when President Bush took office. We are not talking about a few people; 3 million more people have gone into poverty than live in the State of Nevada in the last 3 years. The State of Nevada, if you stretch it, could get up to maybe 2.4 or 2.5 million people. More people than live in the State of Nevada have gone into poverty in the last 3 years. Is that something on which we should spend a few minutes?

Why is there so much poverty? What is going on? Why is the middle class shrinking? And the rich, that class is getting bigger and bigger and the poor are growing bigger and bigger. The middle class is going away. Today more than 34 million people live in poverty. Of that, 12 million are children, babies.

I remember, I wasn't raised with a lot of material things, but I was never hungry. I always had plenty to eat. I can remember in the little town of Searchlight, one of my friends—I don't know how old we were, maybe 11, I think that is about right—was hungry. I never had seen anything like this before. There was a refrigerator. He went into the refrigerator and there was nothing there except a bottle of syrup. And there was hardly anything in the bottle. So he went to the sink and

shook that up and drank that. That kid was hungry. There was nothing in the refrigerator. He shook up that little bit of syrup and he drank it. And I am sure it gave him a little bit of energy.

But 34 million people live in poverty, 12 million children. Some of those kids are like my friend was, who had nothing to eat and drank a bottle of weakened syrup. It was not Vermont pure maple, I will tell you that.

Among full-time, year-round workers, poverty has doubled since the 1970s, from about 1.3 million, and now we have an unacceptably low minimum wage as part of the problem. The minimum-wage employees work 40 hours a week, 52 weeks a year, earn $10,700 a year—more than $4,500 below the poverty line for a family of three. And we can't get on this floor even to debate the minimum wage. They won't let us. They stop us.

No, we are not going to talk about the minimum wage. We are more worried about tax cuts for the elite of this country. We can spend a lot of time talking about tax cuts for the elite, what we can do to make things better for rich people.

But poor people, people who live on the minimum wage—if a person works 40 hours a week, 52 weeks a year of course, they are not getting any vacation time—they make less than $11,000 a year. It is below the poverty line, $4,500 below the poverty line. The current minimum wage fails to provide enough income to enable minimum-wage workers to afford adequate housing any place in the country. Every day the minimum wage is not increased, it continues to lose value and workers fall further and further and further behind.

Minimum-wage workers have already lost all the gains of the 1997 increase. When we raised it, we didn't raise it enough to keep up with past problems. I think it is interesting to note the real value of the minimum wage is more than $3 below what it was in 1968. So whatever the minimum wage was in 1968, we are $3 below that.

The minimum wage today should be $8.15 to have the purchasing power it had in 1968. It is $5.15. Nearly 7 million workers would directly benefit from our proposed minimum-wage increase. And listen to who these workers are: 35 percent are their family's sole earner; 62 percent are women; one-third of these women, that is the money they get for the kids and them, that is all they have; 16 percent are African Americans; 19 percent are Hispanic Americans. A $1.15 increase for a full-time, year-round worker would add $3,000 to their income.

A gain of $3,000 would have an enormous impact on minimum-wage workers and families, even though it still wouldn't give them the buying power they had in 1968. It would be enough money for a low-income family of three to buy 11 months of groceries, 7 months of rent, 14½ months of utilities, and maybe, maybe send one of the kids to school at a community college.

Ms. STABENOW. Will the Senator yield for a question?

Mr. REID. I will without my losing my right to the floor.

Ms. STABENOW. Just one more question for my friend. I thank the Senator again very much for laying out what we ought to be doing, our priorities, all of our debates about values and priorities. The Senator has certainly laid out what the values and priorities should be for our focus of time. As you were reading the list of items, I was thinking about that mom on minimum wage who is caring for her children. She probably has sleepless nights hoping they won't get sick because she is probably not covered for health insurance either.

As we look at the number of people in the country and in my State who have lost their jobs, and the number of people on minimum wage, they are not just losing a job; in most cases, they are losing their health care as well.

In Michigan now, one out of four people under the age of 65 has no health care. Many, as the Senator has talked about, are low-income people; but many of them are high-income manufacturing workers who have lost their jobs.

Would the Senator not agree that what we are seeing now, when people lose their jobs, is not just the loss of the income but a loss of the stability of the families and the ability to care for the health of the family because their health insurance is gone as well? Should we not be talking about what is happening in this country in terms of those who have no health insurance or the businesses that are trying to pay for the health insurance?

Mr. REID. Mr. President, I tell my friend that I read the list of hundreds of companies today that, in the last few months, have laid off people. With rare exception, every one of those jobs is a job where they had health insurance. They are thrown off the rolls because COBRA—that means you can buy the insurance, but they don't have the money to do that. So what happens is they go to an emergency room, which is the highest cost of care in America. That is where they are forced to go. It is a scandal and an embarrassment that we don't do more to help solve the health insurance crisis we have in America.

Wouldn't it be nice, I say to anybody within the sound of my voice, if we had a debate on the Senate floor about health insurance? Why do we have 44 million people with no health insurance? That number is going up. Every day, that number is going up. The first thousand days of the Bush administration should not be days he looks at proudly.

One of the very important issues we have to deal with—I have not talked about it at all today—is, What are we going to do about prescription drugs?

I am very fortunate. We in the Senate have a good health insurance plan. My wife asked me today, when I came to work, if I would call Grubbs Pharmacy—which is on the Hill, and they are very good to work with—if I would call her Las Vegas physician and have him call Grubbs for a couple of prescriptions she needs. We have the money to do that. There wasn't a question of whether we could afford it. I am in a position where we have health insurance.

Most people in America don't have that luxury. Prescription drugs for the elderly and for working-class Americans is very difficult. I want to say before my friend leaves, no one out of the 535 Members of Congress—I hope everybody in Michigan knows this—leadership or nonleadership, has worked as hard and been more devoted to trying to find a solution to the problem of prescription drugs than the junior Senator from Michigan, Ms. STABENOW. She understands the issue. She works hard on the issue. Wouldn't it be nice if, next Wednesday at 6 o'clock, we had a debate between the junior Senator from Michigan and anybody who wants on the other side? You would win the debate hands down. This is an issue we would be happy to debate. Let's take that time and start talking about prescription drugs. Why can we not do that—not only for seniors within the confines of Medicare but do something for everybody?

So we should be, as an institution, somewhat concerned—as busy as we are—with the issues about which we have talked. We have so many different things about which to talk. We have veterans. I have not spent time today talking about veterans. Tomorrow I will spend some time talking about veterans because they deserve some attention, too.

Are we going to talk about veterans on Wednesday at 6 o'clock? Not one word. In fact, Miguel Estrada—and it would not make any difference—is not a veteran. I don't see Pryor's service record, and the two women have not been in the military. So we are talking about four people, as far as I know, with no military experience. We are not going to spend any of the time talking about them from 6 o'clock on Wednesday until 12 o'clock Thursday.

Maybe we should talk about veterans a little bit or about emergency disaster assistance or about homeland security or education for at-risk children. We have not talked about pensions. We need to talk about the Equal Rights and Equal Dignity for Americans Act. That is important. It affects millions of people. There is plenty we need to talk about that will not be allowed to proceed, and we should not be bogged down by 30 hours, covering Wednesday night and all day Thursday into Thursday night, talking about Estrada, who was treated so badly—oh, out of the 30 hours, we will give him 25 percent of the time; we will spend 25 percent of the 30 hours on Owen from Texas; and then we will spend some time on Pickering because we should do that—he is entitled to 25 percent of the 30 hours—

and then, of course, we can wrap it up by spending the rest of the time on the attorney general of Alabama, recognizing that every one of these people has a good job.

So we are going to talk for 30 hours about people who have jobs—four people. We are not spending 30 seconds on the 9 million-plus Americans who have no jobs. We are not spending 30 seconds on the 44 million Americans who have no health insurance. We are not talking about the millions who are going into poverty as we speak, about the people I read about on the charts who are losing jobs now, as we speak. As we speak, decisions are being made to lay people off in America. And then we have the budget deficit and the national debt. That is what we should be doing. But no, we are not going to do that.

Finally, Mr. President, completing my statement for minimum wage, I indicated that if we gave a $1.50 an hour increase, we could give a family of three 11 months of groceries, 7 months of rent, 14½ months of utilities, and they could even pay tuition for most community colleges.

History shows that raising the minimum wage has not had any negative impact on jobs, employment, or inflation. In the 4 years after the last minimum-wage increase was passed, the economy experienced the strongest growth in more than 30 years. Nearly 11 million new jobs were added at a pace of 218,000 a month. There were 6 million new service and industrial jobs and a half a million retail jobs.

A fair increase is long overdue. Congress should act quickly to pass a minimum-wage increase to reflect the losses suffered as a result of the shameful inaction of the past. No one who works for a living should have to live in poverty.

Mr. President, we, as Members of the Senate, are always concerned about the schedule.

(Mr. CORNYN assumed the Chair.)

Mr. REID. I am sure the Senator from Texas, in the few years he has been in the Senate, has asked his leadership a hundred times: When are we going to vote? What is the vote going to be on? People who have been here longer have asked thousands of times.

It is very important that Senators have some idea of what their schedule is going to be. It is very important that the minority be part of setting that schedule. There are certain rules of courtesy and fairness that need to be followed in the Senate. When we learn over here that out of nowhere—we read it in the paper, that is where we first read it, that they, the majority, were going to spend 30 hours—30 hours talking about four people who haven't gotten their jobs. It couldn't be anything else. They are the ones who didn't get their jobs. We approved everyone else. They say: We want to talk about other things. I don't know what else they can ask for. We have four people who didn't get their jobs—four people.

I assume tonight before we go out they will file cloture on a couple more judges. We can vote on a couple more on Wednesday. I assume that is possible also, if we want to spend more time on judges and not on appropriations bills. Maybe by the time Wednesday comes, instead of 4, it will be 5 out of 168, or 6 out of 168.

I really am at a loss to understand why things have to go the way they are. Why we are going to spend all this valuable time talking about people who are fully employed?

There are many important provisions in this Commerce-Justice-State legislation. It is an important bill. I know how important appropriations bills are. I have worked very hard on them in the past. One of the items in this bill is the National Endowment for Democracy. It is a great organization. We fund it and its affiliate institutions. It is about the promotion of democracy. I am glad it is funded in this bill. They have been growing very well, very strong for 20 years now, conducting important work to support fledgling democracies across the world.

As many people know—I refer to the National Endowment for Democracy as NED—NED has four affiliate institutions: the Free Trade Union Institute, the Center for International Private Enterprise, the National Republican Institute, and the National Democratic Institute. I am most familiar with the National Democratic Institute for International Affairs, or NDI. NDI's president, Ken Wollack, and board member, the former Secretary of State Madeleine Albright, have done a remarkable job in dozens of countries throughout the world. This doesn't take away from the other three institutes, but I just know more about this institute.

I have met with field representatives in Africa, Asia, and the former Soviet Union. These individuals are on the front line of a ditch of sorts. They are on the front line in the battle of ideas for freedom and justice. They generally arrive on scene in the midst of conflict or just following some internal revolution, without any kind of fanfare. They go about their important business of providing assistance to civic and political leaders helping build political and civic organizations, safeguarding elections, promoting citizen participation, openness and accountability in government.

There is no doubt the work they carry out on behalf of the American people is absolutely critical to ensuring peace, security, and democracy, and making sure they are sustainable in some of the toughest places in strategic hotspots in the world.

Democracy promotion, whether carried out by NDI, NRI, NED, Peace Corps, or any other American, is incredibly important to advancing our interests of freedom and justice across the globe. People deserve to live in freedom. It is an inherent right, but, unfortunately, it is not a right enjoyed by all. Much work still remains.

With this background, I was pleased to hear the President speak last week about the importance of promoting democracy in the Middle East. I am sorry, however, his comments came 3 years too late. I am sorry the words of the President are just that, words, because they have not been supported by actions.

Indeed, with regard to Iraq, for those of us who voted to support the President to use force in Iraq—I was one of them—I note I not only voted to support the President last fall, but I voted to support the President's father in 1990 and 1991. So I am certainly no dove, as you would see, when it comes to military action.

One thing we pleaded with the President to do was come up with a plan for postwar Iraq. How would we win this most difficult peace? I always said we could win the war, but can we win the peace? We were pushed aside. We were told we would be thrown bouquets as victors, but we have been thrown bombs as invaders.

We were told the Iraq oil revenues would pay for reconstruction. We were told occupation would be short and Iraqis would take over quickly. We were told costing dollars and U.S. lives would not be great. But the price Americans have paid in their national treasure—the sons and daughters—has been huge. Obviously, the financial cost is into the hundreds of billions of dollars. I suspect next year we will be asked to appropriate even more to rebuild this shattered country.

Why would the administration launch the attack without sufficient planning, without regard to development of a civil society, without regard to democracy promotion, without regard to our allies? Why do it, and then 3 years after the President takes office, 6 months after the war begins, talk about the importance of democracy promotion in the Middle East? If the cart was ever before the horse, this was it.

I suppose some would say it is consistent with the view of foreign policy adopted by this administration. In foreign policy, I think it is fair to say, you reap what you sow. I am sorry to say that for 3 years, this administration has sown some bad weather.

Let's talk about some specifics. Upon taking office, the administration pulled the plug on the Kyoto Treaty, pulled out of the ABM Treaty, disavowed the International Criminal Court, and cut off the engagement the Clinton administration had begun with the Iranians and North Koreans. Now, of course, we are back to talking with the North Koreans, and I am glad. I suspect we will even reverse course and soon be talking again to those young Iranians so interested in democracy. I hope so.

The President promised to get out of the conflict between the Israelis and the Palestinians, and he did just that. Predictably, spiraling violence ensued. It has been the worst that part of the

world has ever seen, except when they were in actual war.

Something else happened, too, over these last 3 years. Our State Department, led by one of America's heroes—I really do mean that sincerely. Colin Powell is one of the great Americans of our time. But his Department took a back seat to Secretary Rumsfeld and Under Secretary Paul Wolfowitz.

Democracy, public diplomacy, and other so-called soft aspects of our foreign policy took a back seat to Pentagon planners. National security was unilaterally, singly, viewed in the prism of the five walls of the Pentagon. I am sorry Colin Powell, Aid for International Development, and nongovernmental organizations, such as the National Endowment for Democracy and others, were not factored into our national security equation.

Don't get me wrong, I am and have been one of the most vocal supporters of our troops fighting the ongoing war on terror. Sadly, we live in a world where we have to strike at the enemy before they strike us. This is not preemption as the administration calls it. This is our right and long-understood concepts of self-defense.

Nevadans understand this. They are leading the fight on terrorism in every corner of the globe. Our predator fleet, for example, which is based at Indian Springs Air Force Base, which is part of Nellis Air Force Base, is one of the most effective tools in the arsenal in the war on terror. Our fighter pilots who are trained at Nellis and Fallon are also on the front line of Iraq and Afghanistan. Our National Guard is fighting in every major theater of operation.

I am proud of what they have done for the freedom and defense of this country. I couldn't be more proud of our troops, but I have stated I also couldn't be more disappointed with our policymakers.

For me, fighting terrorism should have always been a two track approach. Track one, of course, is the military track. We need the most lethal, agile, sophisticated, well-trained military anyplace in the world, because of the threats we face each day. We have that military force in place. We cannot sit back and wait for the terrorists to hit us. When we know where they are and where they are training, we need to go after these terror groups with speed and force.

Track two, however, is a nonmilitary approach. It is a track focused on diplomacy, engagement, leadership, and democratic values. These two tracks must run parallel to each other. Concurrently, they must run.

Track one deals with the current threats. Track two ensures that new threats do not emerge. It focuses on education, a civil society, democratic institutions, the rule of law, health care, and other factors that make society strong, so they can reject the extremism of today; strong so ideals of freedom, equality, and justice becomes the fuel that drives the engines of their societies, not hate, not fear, and not violence.

In the well-reported leak of the Rumsfeld memo a couple of weeks ago, he asked just that question. Secretary Rumsfeld asked: What are we doing to address the input side of the terrorist equation? It is a question he should have asked. I am glad he asked it. Again, I am sorry he asked it a few years late. But the short answer, Secretary Rumsfeld, is that we are doing nothing to address the input side because there is no second track to our approach to national security.

Young, uneducated, poverty stricken youth continue to flock to the madrassas where they learn to hate and become attracted to violence. So when the President shows up at the National Endowment for Democracy and talks about the importance of democracy, about the importance of democracy promotion and democracy development, I say, Mr. President, where have you been? Why have you waited so long? Why has this not been a priority of your administration and why was the power of American ideas not projected as loudly as the power of our military during the course of this administration? Why has your administration been controlled by bureaucrats at the Pentagon?

Speaking of bureaucrats, we learned last week that Richard Perle, a Defense Department adviser, was out in the Middle East last year conducting negotiations on behalf of the United States. Under what authority, I do not know. But he was rejecting offers from Iraqi authorities to head off the war.

I do not know how serious these offers were but that really is not the issue. The incident reflects the enormous authority played by the Defense Department and not the State Department in conducting our foreign policy. I hope to be able to ask Secretary Rumsfeld for a full accounting of the Perle negotiations and under what authority he was acting.

Others have already asked that question. I am not sure how a so-called adviser to the Defense Department, who apparently holds a very lucrative consulting contract with defense companies, was negotiating major foreign policy decisions for the American people. It is mysterious and preposterous. At the same time, I hope the Secretary of Defense has an explanation.

Back to the issue at hand, I do hope the President's speech at the National Endowment of Democracy will be more than just words. He does have 1 year left to prove that there will be action to follow up on sweeping rhetoric. No. 1, will he renew the commitment to Afghanistan, a country teetering on the edge of failure? No. 2, will he become engaged at the highest level in the Israeli-Palestinian conflict? No. 3, will he give up some degree of political control in Iraq so NATO can take some of the burden off our troops who are already stretched so thin and so the U.N. can come back in and take over some of the reconstruction efforts? No. 4, will democracy promotion and civil society develop? Will it become a central plank of our foreign policy? Will we put in the necessary resources in order to make our effort successful? Will the President engage our allies again as President Reagan did, as President Bush, Sr., did?

This engagement and leadership substantially helped the efforts at democratization in Central and Eastern Europe in the 1990s. It should not be forgotten that the western Europeans, the European Union, NATO, and others played such a huge role in these democratization efforts, and we did not do it by ourselves. We should not do it by ourselves in Iraq, either. We cannot. It will not work.

So I wait anxiously to see whether there will be action by this administration, action to make democracy a reality, action to make peace and security a reality, action that will make Afghanistan, Iraq, and other nations teetering on the edge a reality, make them more secure. Talking about democracy will not be enough.

Although you have discovered the National Endowment of Democracy 3 years in your administration, Mr. President, I say, better late than never. Let's now see what your administration can do. On this front, you have my full support. I will do everything I can to make this President's initiative a success.

I mention just briefly again how important minimum wage is. People who seek a higher minimum wage, they do not have lobbyists bringing and dropping them off in limousines. They do not have the $1,500 suits like lobbyists trying to help them. Nobody is trying to help them. The people who seek minimum wage have no lobbyists. They are on their own. No one is paying the huge fees we read about in the newspaper. Some lobbyists, on one account, receive hundreds of thousands of dollars a month. Regardless of how much is being paid, the people on minimum wage are paid, who are lobbyists for people on minimum wage? Nobody is a lobbyist for them. We are their lobbyists. The 535 Members of Congress are their lobbyists. We have to try to help them. We have to try to help these desperate people who want to work, and we need to make work better than welfare.

I watched a very interesting piece the other evening on 60 Minutes, I think that is what it was—no, it was not. No, it was not. I take that back. It was in a movie. It was a movie ''Bowling for Columbine.'' I watched that, and they had the story there about this woman who—a number of people who were on welfare and they got a job. They had to drive 50 miles one way, 100 miles every day, and how difficult it was for them. Of course, they are minimum-wage jobs. It would be nice if those people I saw depicted in that movie got a little bit of an increase.

I have indicated that in Nevada we have about 65,000 people who work for minimum wage. More would work for minimum wage if there were more jobs. If we increase the minimum wage to $6.65, that will raise it $1.50 an hour. This raise would help the economic security of thousands of Nevada's low-wage workers.

A worker earning the minimum wage must work 125 hours per week in order to afford a two-bedroom apartment in Nevada. Eight percent of Nevadans live in poverty. The last raise in the minimum wage did not have a negative effect on Nevada's economy. In fact, after the last raise of the minimum wage, Nevada experienced a great economic growth. Over 180,000 new jobs were created.

While retail is often cited as the industry hit hardest by an increase in the minimum wage, 39,700 new retail jobs were created in Nevada after we last passed an increase.

Additionally, unemployment dropped for 4 years, after we passed an increase, from 5.5 to 4.2. So it is time to set aside the old misconceptions about increasing the minimum wage. Congress should act now to give thousands of Nevadans the raise they deserve.

Some people will disagree. They will say, we cannot do that because if we do that people will have to be laid off. The facts do not bear that out, but that is what they say. What I say to that is those people who were talking about that have lobbyists. They have lobbyists who are pushing hard against minimum wage. They are paid large amounts of money every month to make sure nothing pops up on minimum wage.

On the other hand, these people who are seeking minimum-wage increases have nobody to help them, other than us, and we need to do something. We really need to do something to increase minimum wage.

Wouldn't it be nice if we had some time to talk about that, to talk about health care? I think it would be worth it to devote a little bit of our time to something that is certainly important.

We are going to spend our time for the next little bit talking about judges, starting, as I said, Wednesday, and then until Thursday night at midnight. I think it would be good if we talked a little bit about Afghanistan.

I read a book by James Michener. I read a lot of his books. He wrote a book called ''Caravans,'' which was about Afghanistan. That was the name of the book, ''Caravans.'' It was a very good book, written in the typical fashion of Michener, where he worked through the different generations until modern times in Afghanistan. I was struck by what a difficult time that country had always had. It is a country that doesn't have very much in the way of natural resources. Very unlike Iraq, they don't have oil; very limited amounts of water; it is extremely cold; their farm season is short. I would like to spend some time debating this, what more could we do to help?

We know the President has made a decision, basically, to protect just Kabul, the capital. We haven't done much to bring peace to the rest of that country. We should. It could be done. The rest of the country is being run by warlords. We can't leave Afghanistan again. We did it once and that brought about the Taliban. We need to do more than what we have done.

I want to talk about a problem that we have in Afghanistan, a serious problem. The CJS bill affects not only the Department of Justice but also the State Department. There is one problem that concerns me greatly that affects both of these Departments, the Department of Justice and the State Department. It is a problem that not only has serious implications for drug abuse and crime, but also on our relations with other nations in the world. That is the problem of cultivating poppies, which are used to produce heroin that finds it way into our cities and poisons our neighborhoods.

Heroin is an awful product. I mentioned before on occasion, and I will do it again, when I started practicing law in Nevada we did not have a public defender anyplace in the State—not a Federal public defender, nor any of the counties. As a young lawyer, I was appointed by the then-chief justice, David Zenoff, to represent a man by the name of Humbert Gregory Torus. He was known as Greg Torus.

When I went to see him in the old Clark County jail and looked through those bars, I was excited because it was my first criminal appointment. But as I looked through those bars, I saw a handsome young man, about 21, 22 years old—stunningly handsome. He was there on a couple of burglary charges. Why? He was addicted to heroin. He had been a heroin addict. He came from New York. He had been a heroin addict since he was 16 years old. His IQ was off the charts. It benefited him only in his ability to scheme deviously to get more heroin.

As my first criminal appointment, I spent many days of my life working with him. We were able to work out a deal. He got out of jail. He married a beautiful showgirl from Las Vegas, a girl from Ireland with beautiful red hair named Maurine. I haven't talked to her in a number of years, a beautiful woman. She didn't know what she was getting herself into. But she was forced to deal with a man she loved who was addicted to a poison, a substance called heroin. He would lie, he would cheat, he would steal his own family's money to satisfy his craving for this substance.

His wife had a baby while he was in prison. He got out of prison; he stole from his family again. I could go on for a long time about this tragedy of this man who could have been anything he wanted but for heroin as a 16-year-old boy. The last I heard from him, he was in prison someplace up in the Northwest. His wife had left, finally divorced him. She even traveled, lived in Carson City so she could be near her husband at the prison up there.

Heroin is bad. It is a poison. Is poisons our neighborhoods, and there are thousands and thousands of Gregory Torus's in the world. I hope he is OK now. I hope he is leading a good life someplace and has been able to kick that habit. The problem with heroin is very few people can kick the habit. The recidivism for heroin is upwards of 90 percent. They cannot kick it. It is a craving they can't overcome. There aren't many old heroin addicts. They are either in prison or dead.

But heroin comes from a lot of places. One of the places it is coming from in large quantities now is Afghanistan. The Washington Post ran a story today headlined, ''Afghan Poppies Sprout Again. Production Nears RECORD Levels, Worrying Anti-Drug Officials.''

> Two years ago, Afghanistan was virtually poppy free. . . . But in recent months . . . opium poppies have made a spectacular comeback, nearly reaching the record-high production levels of the 1990s.
>
> According to a crime report released last month by the U.N. Office of Drugs and Crime, Afghan poppies—whose sap was the basis of three-fourths of the opium and heroin consumed illegally abroad—are being grown on 197,000 acres across 28 of the country's 32 provinces. This year the country is expected to produce [almost 4,000 tons] of opium worth about $2.3 billion, which is equal to half of Afghanistan's gross domestic product.

Afghanistan is not the only place where the cultivation of poppies is a problem for us. The same thing goes for our southern neighbor with whom we share a 2,000-mile border where economic conditions are particularly bad right now. Desperate people take desperate measures. Many people in Mexico are desperate.

A few years ago, Mexico seemed on the verge of an economic breakthrough. But today, Mexico's growth rate is half of what it was in the 1990s. More than half of all Mexicans, more than 50 million people, have an annual income of less than $1,400. Almost one-fourth of all Mexicans have an annual income of about $720, less than $2 a day.

There is little hope for these people in the Mexican countryside where coffee prices have plummeted, where homes and land values are falling because of the badly broken system of private property ownership. So these desperate people take desperate measures. Maybe they flee to Mexico City for a while, but there is not much hope there, either.

There is a debate going on in the world of which city is the most polluted, Cairo, Egypt, or Mexico City, Mexico. Our Foreign Service officers who serve there are given extra pay because the health conditions are so bad in those two cities. Most refugees from the countryside wind up in crowded shanty towns, breathing horrible air, living in filth. Or maybe they remain on the land, but instead of growing coffee, turn to illegal crop production,

growing either poppies or marijuana, or perhaps they put their lives in the hands of unscrupulous coyotes who promise to lead them across the desert to the land of plenty. If they don't die trying, they reach the United States where they place an added burden on our security officials and social services.

I don't condone illegal immigration. I certainly don't condone farmers growing illegal crops. But I understand desperate people doing desperate things in desperate conditions in Mexico affecting the United States. That is why I sponsored an amendment recently to the State Department authorization bill that extends a helping hand to our neighbor Mexico. It provides $10 million for microcredit lending to small businesses and for entrepreneurial development aid to small farmers and persons who have been affected by the collapse of coffee prices. It calls for programs to support Mexico's private coffee ownership system which is in dire need of repair.

My friend, Senator ENSIGN, supports this. He says this is what the free enterprise system is all about. I am grateful to all of my colleagues who voted for this amendment. It won't solve these problems overnight, but we have to start somewhere. Our neighbor needs help. We can't turn a blind eye to our friends in Mexico. This is not a handout; it is a commitment to a free-market-based program that will support long-term development and growth in rural areas of Mexico.

By extending a hand to our neighbor, we are also keeping our own Nation strong and keeping it secure. That is what our State Department should be looking at. That is what we need to do.

I remind everyone why we are here today. We have been doing very well this year, in spite of the very close makeup of the Senate. We have 51 Republicans and 49 Democrats. Senator DASCHLE and I said this is not payback time. We want to work for the good of this country. These aren't just words. Look at our record. Our record was recited by the majority whip today, Senator MCCONNELL. We have passed 10 appropriations bills this year. As the Presiding Officer knows, in his limited time here—and he is a person who is certainly versed in the way we govern. He had a very impressive record before coming here as a Senator. As the Senator knows, in the Senate nothing happens unless there is unanimous consent. We all have to agree. On an appropriations bill, it is even more than that; you have to have a will to pass these bills. People love to offer amendments. They have been stopped from offering amendments in which they believe.

We have had to work on this side with Senators saying: We need to move these appropriations bills. It is for the good of the country. Let us work to move these appropriations bills. What can we do to help move this along?

We have worked. There have been many things we could do and many things that we have done to move these appropriations bills along. As a result, we have a great record. We passed 10 appropriations bills. Senator DASCHLE decided—and even though people didn't like it over here—OK, we are going to work on these appropriations bills, and we are even going to agree to work today, November 10, and on a national legal holiday. We are going to work Veterans Day. He said and I said that the veterans will understand that. We have the business of the country to do. Veterans, above all, will understand that.

With a little bit of lamenting on our side from some Members saying, How can you do this, it is a national holiday, they followed the leadership of Senator DASCHLE: OK, we will work Monday and Tuesday. Then, talk about a sucker punch.

The great Houdini got himself out of a lot of binds. He was a small man but would let the biggest man in the world hit him right in the stomach. No matter how big that man was, Houdini would let him hit him. But Houdini one time stood up and was not prepared to be hit. He was hit and it killed him. That was a sucker punch. He didn't know it was coming. That is what happened to us—a sucker punch.

We didn't know there was a plan to take up the sad plight of four people who are making a half million dollars a year. We are going to spend 30 hours of the Senate's time dealing with that. Well, that is enough. As I said here on the Senate floor, we turned the other cheek and maybe we should have turned it another time, but you can only be slapped around so many times. We thought that was a little much after how we have cooperated in an effort to do the business of this country. We agreed to work on November 10, and we even agreed to work on a national holiday, and they are going to spend—the leadership—30 hours on Estrada, Owen, Pickering, and Pryor when we have, as I have talked about today, approaching 9 million people out of work.

Everybody else has heard it. I see my friend from Illinois in the Chamber. Everything is going up—unemployment, poverty, uninsured, deficit, national debt. Everything is going up. We don't talk about that. We are going to spend 30 hours talking about what is going down—the lowest vacancies in almost 15 years with Federal judges. And we are going to spend 30 hours talking about four people who have good jobs. One of them makes over half a million dollars. The rest make half a million dollars. And we are going to spend time on those judges? I don't think that is really fair.

Mr. DURBIN. Mr. President, will the Senator yield?

Mr. REID. I will yield to my friend from Illinois, without losing the floor, for a question.

Mr. DURBIN. I thank the Senator for bringing this to the attention of the Senate and those who are following this proceeding.

Can the Senator from Nevada tell us—apparently there is a belief on the Republican side of the aisle that there is a disproportionate number of judicial nominees suggested by President Bush who have not been approved—the number of judges approved for President Bush and how many have been held up here in the Senate as of this time?

Mr. REID. Mr. President, that is something that is easy to answer. We have approved 168 judges, and we have turned down 4. I gave you their names: Estrada, Pickering, Owen, and Pryor. We have turned them down. Maybe the magic number is not 98 percent. Whether it is his way or no way, maybe we should have approved all of them. Maybe we should have swallowed very hard and approved people who the American people I am sure, if they understood what this is all about, wouldn't like very much. But they want to spend 30 hours on four judges.

My friend from Illinois came here in 1982. He is someone for whom I have great affection. I say to him through the Chair, when we were told we would be in on Monday: What is going to happen? I do not know. Well, we will have some votes. When? We will decide later when those votes will be. Maybe somebody knew. We didn't know. And Tuesday? Well, we don't know. Maybe some people on the east coast can go back to the festivities and the parades on Veterans Day.

We aren't a part of what is going on here. What this is all about today is the Senate is a partnership between the majority and the minority, especially when you have a difference of one—49 to 51. That is why the Republican majority must understand that we have to be part of what is going on around here. We cannot be taken for granted. We cannot be thought of as nothing. We cannot be treated as if we were Members of the House of Representatives. I have been in the House. I understand how the majority works. I have been there. If you are in the minority in the House of Representatives, you can be pushed around pretty hard. But in the Senate, the Constitution of the United States protects the minority. The Constitution was written not to protect the majority. The majority can always take care of themselves.

Mr. DURBIN. Mr. President, will the Senator yield for another question?

Mr. REID. I will yield for a question without losing the floor.

Mr. DURBIN. I would like to go back to this point. Since President Bush was elected to be President, he has had 168 of his judicial nominees approved by this Senate, and 4 have not been approved—the 4 the Senator from Nevada mentioned earlier.

I would like to ask the Senator from Nevada, am I mistaken that in this Constitution which we are all sworn to uphold, article II, section 2, it says that the President shall have the power to make his appointments with the advice and consent of the Senate? I would

like to ask the Senator what that phrase could possibly mean—advice and consent—if it is the position of the Republicans that every nominee has to be approved. If they believe that approving 98 percent is not adequate, that we have to approve 100 percent, I would like to ask the Senator from Nevada what the phrase ''advice and consent'' means. Shouldn't it just be ''consent''?

Mr. REID. I respond to my friend from Illinois, who I know is not only a lawyer but my recollection is that he was a parliamentarian of the Illinois State Senate and certainly understands parliamentary procedure. He certainly understands parliamentary procedure. I believe the words ''advice and consent'' mean just what they say. It means we have the obligation as a Senate to work with the President, to give him advice as to what we think should be done on some appointments set forth in the Constitution, and others not so directly defined, to give advice, and once we work with him, give him consent to select whoever he wants.

I say to my friend, I am not overjoyed with all 168, but the minority of the Judiciary Committee has done an extremely good job in sifting out people who just do not meet basic standards. I appreciate the work done by the Judiciary Committee. I have not served on the Judiciary Committee either in the House or the Senate, but I served in the Judiciary Committee when I was in the State legislature in Nevada.

Why bring in the Judiciary Committee? There are so many things you can work on and many things we need to work on here that we are not spending time on because of the time we are spending on judges. We have done a good job of getting rid of the backlog. It is the lowest in approximately 13 years.

Mr. DURBIN. Will the Senator yield for another question without losing the floor?

Clearly, the Constitution gives the Senate the authority to say no to a judicial nominee. Is this a question of fairness? Are the Democrats in the Senate treating this Republican President unfairly by only giving him 98 percent of the people he has nominated? Is it fair to conclude when there was a Democratic President, the Republicans in control gave that President 100 percent of his judicial nominees? Does the Senator feel the Republicans are going through a display for 30 hours because we are fundamentally unfair in treating them in a fashion that they did not treat President Clinton?

Mr. REID. I say to my friend, when we talked about this early in the day, Senator DASCHLE made a decision there is no payback time. We are not trying in any way to get even with the Republicans for holding up judges. If we did that, if we were trying to get even, there would not be 168 judges agreed to.

Here is a partial list of some of the difficulties we had when President Clinton was President. People are saying there has been no need to file cloture. Berzon, Paez, Barkett, you can say whatever you want, these were not serious cloture votes—and I don't know the difference between a serious and nonserious cloture—the only way these people could become judges is by filing cloture. For people to say we are not treating the judges fairly is simply wrong. We are treating the judges fairly. We are treating President Bush fairly. He has gotten 168 judges and we have turned down 4.

We are going to spend the valuable time of this Senate, 30 hours, on 4 people who already have jobs, when we have almost 10 million unemployed people, and we have done nothing about the minimum wage. We are doing nothing about the environment. We are doing nothing on appropriations bills. We have conference reports we have not taken up. We have pending a conference report on the Armed Services Committee that could be acted on at any time, Military Construction. We have the Syria Accountability Act. The defense authorization was not completed. I did not ask unanimous consent on that. I did on Military Construction and the Syria Accountability Act. I agreed that instead of taking 90 minutes we would take 30 minutes each and debate it just for an hour. No, they are more interested in these 4 people who already have jobs than the approximately 10 million people who do not have jobs. People are being driven into poverty, the deficit is going up, the debt is increasing.

Mr. DURBIN. If the Senator will yield for another question without yielding the floor.

Mr. REID. I am happy to yield.

Mr. DURBIN. If I understand this correctly, there is no constitutional basis for the Republicans to argue that we cannot turn down a nominee from the President. In fact, the Constitution is explicit that we have the power of advice and consent. The facts show us that 98 percent of the nominees sent by the President have been approved; 168 have been approved, and only 4 have been held back.

The Republicans cannot argue they treated President Clinton any better. In fact, the record reflects there were 60 nominees sent to the Senate by President Clinton who were never even given a hearing before the Republican-controlled Senate Judiciary Committee.

It leads me to a question of the Senator from Nevada, through the Chair, Why then are we going to take 30 hours to debate the obvious? If we have the constitutional right to say no to a nominee, if we have said yes to 98 percent of the President's nominees, if the Republicans, when they were in control, turned down an even greater percentage of President Clinton's nominees, why then wouldn't we get about the business of the people of this country, pass the important appropriations bills, try to do something to help the economy, instead of wasting 30 hours debating the obvious?

Mr. REID. I say to my friend, through the Chair, I don't know. I am at a loss. I am not at a loss that when the Senate is in action, it takes both sides. You cannot do both things as a dictator. The majority leader of this Senate is not the Speaker of House of Representatives. He is the majority leader and leads under very delicate rules. To think we were just going to say, OK, we have worked like dogs, we have gotten a great record here, passing 10 appropriations bills and 3 other bills we could do, and we will take 30 valuable hours of the Senate time. We could debate the many things I talked about here, beginning with the environment. We could talk about minimum wage. We could talk about people who have lost their jobs in America today. We could talk about the need for a transportation bill. We could talk about the need for infrastructure development in this country. We could talk about farm programs we need to look at. The Senator from Nebraska talked about droughts all over the Midwest. We need to spend some time on that. But we do not have time to do that. No, because we are going to spend 30 nonstop hours on an agenda dealing with four people.

Let me go over this again. This is over four people. We do not want to lose track of what we are doing. The fact of the matter is, we as Democrats determined that under our rules, our advise and consent obligations, there were four people we thought should not have the support of the Senate Democrats.

Why did we have some concern about Miguel Estrada? Miguel Estrada could be the nicest person in the world. I don't know. But the fact is he was either given bad advice or had made some very bad decisions. We thought it would be important that Miguel Estrada fill out all the questions we asked him in his application. He would not do that. He was vague. He appeared to think he was smarter than anyone else and he did not have to answer those questions. When we said, OK, we want you to do that and we also want you to give us the memos when you were at the Solicitor's Office, what did he say? Drop dead; I will not give that to you. Some say, that would violate the attorney-client privilege. Come on. I know about attorney-client privilege. I know it has been done in the past. Other people who wanted to get Senate approval gave us those memos. I don't know if he did not give us those memos because he did not want to or he was afraid of what we would find. There is more, but basically that is why we did not approve Miguel Estrada.

Why didn't we approve Charles Pickering? As I have said before, I think the world of THAD COCHRAN. I think the world of TRENT LOTT. I work with them on the Senate floor. Just because of having worked with them so many years, and their close feelings toward

Pickering, it would have been nice if we could have done that; but we could not.

We could not because the man had created a record that was so in opposition to what fairness calls for in this country, that every human rights, civil rights group in America said: Please don't approve this guy.

Some of the most dynamic speeches I ever heard was when a group of civil rights people came to this Capitol and talked about why they did not want Charles Pickering. One of the fine speeches that day was given by Representative JOHN LEWIS, an American hero who has been beaten many times as a civil rights advocate at the left arm of Martin Luther King. He told us: You can't do that. He does not deserve it.

Then Priscilla Owen, we turned her down. She is a judge on the Texas Supreme Court. Her opinions are out of the mainstream of American jurisprudence. Even the President's own attorney said so.

Then we go to William Pryor, the attorney general of Alabama. His record is not very good, and that is an understatement.

So we turned them down. We turned all four of them down.

Now, I say to people who are watching this debate, that is 168 approved, 4 disapproved. Complain about it. Say we were wrong, we made bad decisions over here, but do not take 30 hours of the Senate's time and think you can just run over us and say: We're going to do that. If you don't like it, what can you do about it?

Well, we are showing you a little bit what we can do about it. The Senate only works if there is cooperation, if there is teamwork. So I say, Mr. President, this teamwork is going to have to be reenergized, reinvigorated, started over again.

The Senate is a body where one person can throw a monkey wrench into almost everything, and that monkey wrench has been thrown into it today by the Senator from Nevada simply because I thought it was fair to take care of people on this side of the aisle who did not know when votes were going to occur—we could not be told when they would occur—and just basically to show that there are 49 of us over here. You have to listen to us. You just cannot do things that we are not talked with, counseled with.

We know the powers the majority has. They can bring legislation to the floor. But as far as setting schedule, we have a lot to say about that. We are going to continue to have a lot to say about it. We cannot be treated the way we have been treated.

I know there are some who say we should be doing other things here today, and I would like to be doing other things today. I guess everybody is locked into the 30-hour debate, and it is too bad we are going to find ourselves in that position.

We could have finished last week—had this thing not occurred—we could have finished the Agriculture appropriations bill in 1 day instead of 2. This bill could have already been completed, and we would be going to the other appropriations bills. We could be doing Foreign Operations. We could be doing VA–HUD. I think that would just about complete all of our work. We could be doing that. But we are not doing that today.

We certainly could have completed, by Thursday, at midnight, all our appropriations bills—by Thursday, at midnight.

(Mr. ENSIGN assumed the Chair.)

Mr. REID. Mr. President, we hear a lot about the ''special interests'' and how the general public lacks the lobbyists to look out for the public interests here in Washington, DC.

In fact, I talked about the people who get minimum wage, how they have no lobbyists to help them. But I rise today to draw attention to the exception to what does often seem the rule. This week, the Environmental Working Group, called EWG, will celebrate its 10-year anniversary of shaping the public debate on issues ranging from farm policy to the many other issues dealing with the environment.

The EWG was founded by Ken Cook 10 years ago to fill a void in the public interest community. While there were groups out there doing research and making policy proposals in the environmental arena, very few had the mission to readily translate that research and policy to the national stage and to the media.

Using the Internet and other Web-based tools, the Environmental Working Group has effectively taken those debates to the people, arming them with the information necessary to communicate with their elected Representatives. As important, EWG's work has helped to transform those debates in the media.

I extend my appreciation for the work they have done. They are an outstanding organization that gets facts to people who have never gotten facts before, such as through the Internet. I applaud and commend them on their very good work.

There are a number of other issues we need to talk about. One of the issues I wish to talk about is the Energy bill that is in conference. Some say that could come back any day. I traveled with the ranking Democrat on that committee who is involved in the Energy bill and the Medicare bill. Over the weekend, I traveled with him, and he thought the Energy bill would be worked out today. But as we flew into Dulles Airport last night, we got a Blackberry that said, no, it was not going to happen. I hope something like that does happen soon.

I know the conference report is not going to look like the bill we passed out of the Senate in July. I wish it did. I have not seen it yet, but I understand one of the terrible provisions negotiators intend to slip into the conference report will let the oil companies off the hook for cleaning up the mess they made with the MTBE. I don't know if that is the case, but I hope that is not the case.

MTBE is a human carcinogen and when leaked into water, even in small amounts, it causes water to take on the taste and smell of turpentine, rendering it undrinkable. We have had this problem in the Lake Tahoe area.

MTBE leaking from underground storage tanks, recreational watercraft, and abandoned automobiles has led to growing detections of MTBE in drinking water. In fact, the U.S. Geological Survey has estimated the MTBE may contaminate roughly one-third of drinking water supplies nationwide.

MTBE poses a different threat to drinking water relative to the other harmful constituents of gasoline because MTBE is more soluble, more mobile, and degrades slower than those other constituents.

Oil companies began adding MTBE to gasoline at least as early as 1979, using 215,000 tons in that year alone. By 1986, oil companies were adding 54,000 barrels of MTBE to gasoline each day. By 1991, 1 year before the Clean Air Act oxygenate requirement went into effect, oil companies were using more than 100,000 barrels of MTBE each day. By 1997, the volume of MTBE production was the second highest of any chemical in the United States.

These basic facts underscore two extremely important points about the committee's consideration of solutions to the MTBE contamination problem.

First, proposals that simply remove the Clean Air Act oxygenate—I have been here a little too long today maybe. At any rate, first, proposals that simply remove the CAA oxygenate requirement from the law without affirmatively banning MTBE will simply not end MTBE use. As noted above, MTBE was used for octane enhancement long before the Clean Air Act amendments of 1990. There is no reason to believe it would not be continued to be used if the Clean Air Act oxygenate requirement were removed from the law but no ban put in place.

In another example, in May 1999, two oil companies in the San Francisco area were found to have been adding substantial volumes of MTBE to gasoline. At the time, that area complied with air standards and, therefore, the Clean Air Act did not require the addition of an oxygenate. Again, companies were adding MTBE to gasoline for reasons wholly independent of the Clean Air Act amendments.

Second, these facts belie the oil companies' arguments that Congress made oil companies use MTBE and, therefore, lawsuits against oil companies should be terminated by Congress and taxpayers should pay to clean up MTBE contamination. MTBE was in use well before the passage of the Clean Air Act amendments.

The CAA does not mandate the use of MTBE. And the fact that there was any oxygenate requirement in those

amendments at all was due, in part, to oil industry lobbying.

For example, in 1989 testimony before the Senate Committee on Environment and Public Works, an ARCO official strongly recommended that the committee include a mandate for MTBE in the Clean Air Act Amendments of 1990, touting MTBE's benefits but not disclosing its devastating impact on drinking water. Hearings Before the Subcommittee on Environmental Protection of the Committee on Environment and Public Works on S. 1630, S. Hrg. 101–331 at 458, Sept. 28, 1989. Despite such lobbying, Congress did not adopt an MTBE mandate, but rather prescribed that reformulated gasoline contain an oxygenate without specifying a particular product.

At the time of such lobbying, oil companies knew they were recommending a product that would have a devastating impact on drinking water. Indeed, where courts have heard oil industry claims that they should not be held liable for MTBE contaminated drinking water supplies, they have not only rejected those claims but have found that companies acted with malice in not disclosing the risks of using MTBE.

In fact, over a dozen communities have sued oil companies for knowingly introducing a defective product into the marketplace. Several oil companies recently settled one such suit, South Tahoe Public Utility District v. Atlantic Richfield Company, et al., for $60 million. In South Tahoe, it was determined that oil companies were guilty of irresponsibly manufacturing and distributing MTBE because these companies knew it would contaminate drinking water.

It was also found by clear and convincing evidence that two companies had acted with ''malice'' by failing to warn of the environmental dangers of MTBE.

Together, documents and sworn testimony in South Tahoe demonstrated that several oil companies knew as early as 1980 that MTBE posed a significant threat to the Nation's drinking water, that they promoted MTBE to the State and Federal Governments without disclosing internal information demonstrating that threat, and that they attempted to discredit public scientific studies that began to demonstrate that threat.

Documents and sworn testimony in South Tahoe also revealed that oil company officials, showing a callous disregard for our environment, even gave MTBE telling nicknames such as ''Most Things Biodegrade Easier,'' ''Menace Threatening Our Environment'' and ''Major Threat to Better Earnings.'' Further the case also revealed that Shell and ARCO, the first refiners to add MTBE to gasoline, estimated that 20 percent of all underground storage tanks—tanks likely containing MTBE—were leaking. Several oil companies were shown to have both developed and promoted the concept of using reformulated gasoline to reduce air emissions.

For example, ARCO officials testified that ''EPA did not initiate . . . reformulated gasoline'' and that ''[T]he oil industry brought [reformulated gasoline] forward as an alternative to what the EPA had initially proposed.'' Documents and sworn testimony also revealed that in 1987 an ARCO representative testified before the Colorado Air Quality Control Commission that MTBE would aid in reducing air emissions but did not warn of the drinking water contamination threat. This representative testified that he also assisted Arizona and Nevada develop oxygenate programs that relied upon MTBE without disclosing the danger.

In 1986, the Maine Department of Environmental Protection issued a scientific report describing the threat posed by MTBE. Documents and sworn testimony in South Tahoe revealed a concerted strategy by the oil industry to discredit the article at the same time that internal industry documents admitted the soundness of the Maine warning. When the Maine paper prompted EPA to issue a notice to oil companies for more information regarding MTBE, ARCO responded in 1987 that there was little information to suggest MTBE was a threat despite internal ARCO documents showing the contrary.

As South Tahoe demonstrates, terminating the right of communities to seek legal redress against oil companies for MTBE contamination would be a grave injustice. It has not been embraced by the committee, it should not be embraced by the Senate, and it should not become law.

The first hearing of this committee on MTBE was chaired by Senator BOXER in December 1997, after Santa Monica lost the majority of its drinking water to contamination caused by a then little known fuel additive. Since Senator BOXER's first call to ban MTBE now over 5 years ago, this committee has conducted scores of hearings, considered alternate legislative approaches and ultimately approved various versions of legislation similar to S. 791.

Such legislation approved by this committee has consistently called for MTBE's phaseout. It has also consistently rejected terminating the right of communities affected by MTBE to seek redress against oil companies in court. As consideration of S. 791 moves to the full Senate, these two principles that have guided committee consideration of the MTBE issue must remain intact if the MTBE problem is to be truly and equitably solved.

We have in this bill dealing with Commerce-State-Justice appropriations a provision that funds the Board of Immigration Appeals. I would like to take a few minutes to discuss the board, immigration policy, and the importance of the Dream Act. In the past year, the Bush administration has attempted to dismantle the only judicial review process we have for our Nation's immigrants. The board is responsible for applying the immigration nationality laws uniformly throughout the United States. Accordingly, the board has given nationwide jurisdiction to review the orders of immigration judges and other immigration-related decisions. Decisions of the board are subject to judicial review in the Federal courts.

In September 2002, the Bush administration consolidated the Bureau of Indian Affairs appellate procedures by turning its three-judge panel process to a single judge. Review by three judges is only required where the BIA must correct clear errors of fact, interpret the law, or provide guidance regarding the exercise of discretion. The 2002 rule permits a single-judge decision-only brief. No written opinion is necessary. The purpose of this legislation was to enable the board to resolve simple cases quickly. The effect, however, has been anything but efficient.

In a 12-month period, the number of immigration administrative agency appeals filed in Federal court has tripled. The American Immigration Lawyers Association, or AILA, which represents over 8,000 of our Nation's immigration lawyers and law professors who practice and teach immigration law, has been a long-time human rights advocacy organization and has stated that in a 1-year period, the rate of rejected appeals has skyrocketed from 59 percent to 86 percent. The independence and impartiality of our immigration court system must be safeguarded. The Supreme Court, in Plyer v. Doe, stated that:

> Whatever his status under immigration laws, an alien is surely a person. Aliens, even aliens whose presence in this country is unlawful, have long been recognized as persons guaranteed due process of law by the 5th and 14th amendments to our Constitution.

In October of 2003, the American Bar Association called upon the Board of Immigration Appeals to discard its new procedures and set forth suggested reforms to the backlog of cases. And we have the American Bar Association report, which we will get to at a later time. Streamlining the Board of Immigration Appeals process is just one example of an ongoing effort by this administration to shortchange our Nation's hard-working immigrants. While our Nation's immigration laws must be enforced to the fullest extent, I can't help but wonder why our Government is attacking the very people who help us build up our Nation. I think this is just an example of an ongoing effort by the administration to shortchange our Nation's hard-working immigrants.

I think our Nation's immigration laws must be enforced to the fullest extent. I cannot help but wonder why our Government is attacking the very people who help us build up our Nation. I think this is just an example of the ongoing efforts by the administration to shortchange our Nation's hard-working people. Our Nation's immigration laws

must be enforced to the fullest extent. I cannot help but wonder why our Government is attacking the very people who help us build up our Nation rather than targeting those who tear it down.

For example, in October 2003, Federal agents detained about 300 suspected illegal immigrants in a nationwide investigation of cleaning crews at Wal-Mart stores. The authorities took the immigrants into custody as they finished the night shift in 61 stores in 21 States.

Certainly, they would not want to interfere with Wal-Mart and arrest them before their shift was completed. The store might be dirty. We need the immigration policy along the lines of the DREAM Act that was introduced by Senators HATCH and DURBIN, and I also cosponsored that. The DREAM Act gives States the discretion to grant State residency to certain youth and authorizes the Federal Government to grant undocumented students who are hoping to enter an institution of higher education conditional legal permanent resident status.

Currently, unauthorized immigrants are not eligible for Federal financial aid, are not legally allowed to work, and are vulnerable to removal from the country, regardless of the number of years they have lived there. The DREAM Act would allow college-bound, undocumented students to apply for Federal financial aid if they meet certain criteria, including continuous residency for the previous 5 years, a high school diploma or its equivalent, and good moral character.

This is the kind of immigration policy we should be enacting. I welcome the CGS committee report language for 2004, which states funds saved in this streamlined process are being spent three times over by the civil division, which must defend BIA's decisions in Federal court. Accordingly, the committee directed BIA to submit a report to the Committees on Appropriations no later than March 21, 2004, listing the single-judge decisions that have been appealed to the Federal courts and the civil division's cost to defend these decisions over the past 3 years.

I hope this body will enact the necessary immigration laws in this Congress.

Mr. President, I want to read a story that appeared in the newspaper on October 25:

Every night for months, Victor Zavala, Jr., who was arrested on Thursday in a 21–State immigration raid, said he showed up at the Wal-Mart store in New Jersey to clean floors. As the store's regular employees left at 11 p.m., he said, they often asked him whether he ever got a night off. Zavala, identified by Federal agents as a cleaning immigrant from Mexico, told the Wal-Mart workers that he and 4 others employed by a cleaning contractor worked at the Wal-Mart in Old Bridge every night of the year, except Christmas and New Years.

Now Mr. Zavala feels cheated, saying he worked as hard as he could pursuing the American dream, only to face an immigration hearing that could lead to deportation for himself, his wife, Eunice, and their 3 children, 10, 7, and 5 years old. He is one of 250 janitors employed by Wal-Mart contractors who were arrested at 60 Wal-Mart stores before dawn on Thursday.

Again, I think it is interesting that they waited until the stores were clean before they picked them up. They would not even consider offending Wal-Mart by having a dirty store for their workers. Maybe, you know, if these illegal immigrants were not hired and Wal-Mart gave these people workable wages, maybe they would hire other people—maybe people who were legal immigrants. But Wal-Mart can sell stuff pretty cheap because they don't pay them anything; they have no health care benefits, no retirement benefits. So they get by pretty cheaply.

I think it was nice of Immigration and Naturalization to wait until they cleaned the stores before they picked them up. That would give the contractor time to go find some other cheap labor. Maybe for a while they will have to pay a little more than what they were paying. Wal-Mart is great for low prices but the low prices are also given to their employees.

Most Wal-Mart employees—we have seen things written about this recently—have no health benefits, no retirement benefits, and no vacation benefits. They work for very low wages and most of the time not for 40 hours. They make sure they don't because they might be allowed some kind of benefits.

''My family is not happy about this,'' Mr. Zavala said. He said he paid $2,000 to smuggle him into the U.S. 3 years ago. ''My children don't want to leave and go back to Mexico.''

I am sure that is true.

A Federal law enforcement official who spoke on condition of anonymity, said yesterday that several current and contract cleaning contractors for Wal-Mart, the Nation's biggest retailer, were cooperating with the Government in its investigation. On Thursday, Federal officials acknowledged that they had wiretaps and recordings of conversations in meetings among Wal-Mart executives and contractors. Federal officials said as part of the Thursday raid, they searched the office of midlevel management at Wal-Mart headquarters in Bentonville, AR. Officials said the Government believed that Wal-Mart executives knew the cleaning contractors were using illegal immigrants.

Of course they did.

Federal officials noted that 102 illegal immigrants working for Wal-Mart cleaning contractors had been arrested in 1998, 2001, and 13 Wal-Mart cleaning contractors had pleaded guilty after those arrests. Those pleas remain under court seal. Wal-Mart said yesterday it had begun an internal investigation and would dismiss anybody who did not have proper immigration papers. Wal-Mart also told its officials to preserve any documents that might be relevant to the Federal inquiry.

Isn't that nice?

Wal-Mart officials said the raid surprised them.

I'll bet.

They acknowledged yesterday that 10 immigrants arrested on Thursday in Arizona and Kentucky were employed directly by Wal-Mart. The company officials said they brought these workers in-house after certain stores phased out the use of contractors for whom the immigrants had worked. Wal-Mart officials also said the company required contractors to hire legal workers only.

Well, I say that Wal-Mart is involved in this, and I think it is an indication of why they can sell stuff so cheaply. They do it under the auspices of low prices.

I spent a lot of time here today. I thought I would do a little reading from my book. I wrote a book and not everybody has heard of it. I didn't sell too many, to be honest with you. I was hoping it would be a best seller. The only place it is a best seller is in Searchlight. Of course, Searchlight is not very big, so that doesn't mean too much. But I am going to skip the introduction and get right to the meat of the book.

Searchlight is like many Nevada towns and cities: it would never have come to be had gold not been discovered. Situated on rocky, windy, and arid terrain without artesian wells or surface water of any kind, the place we call Searchlight was not a gathering spot for Indian or animal.

Only fourteen miles to the east is the Colorado River. Ten miles to the west is a modest mountain range, with fragrant cedars, stately pines, and a few sheltered meadows, home to an ancient Indian camp referred to as Crescent.

Mr. President, I am doing this because I have been talking for 5½ hours, or so, on a lot of substance. I think at least during the time I am going to talk, I should at least teach a little bit about Searchlight. I know the Presiding Officer is an expert on Searchlight and need not hear this. I am sorry he got the luck of the draw. I hope he will bear with me.

To the northeast lies the canyon called Eldorado. In the eighteenth century the Spaniards explored and then mined this area. The same location was exploited by Brigham Young, who directed some of his Mormon followers to present-day Nevada in search of minerals for his Utah civilization. To the southwest, about fifteen miles distant, is the site of a U.S. military frontier outpost, Fort Piute or Piute Springs.

Also, reading here, I might drum up some sales for my book. I hadn't thought of that. That would be something—although I don't directly benefit from that. I have a separate foundation and the proceeds go to Searchlight.

Anyone who wants to buy this book can get it on the Internet: ''Searchlight, The Camp the Didn't Fail.'' Proceeds go to the little town of Searchlight.

The mighty Colorado River was used for various routes along the navigable portion of its course. The main impediment to through passage from the north was the Grand Canyon, but the river was usable for about a hundred miles above Searchlight to as far south as the border of present-day Mexico.

During the Civil War the U.S. military tried to find better routes for moving men and supplies. Captain George Price, who had been commissioned by his superiors to find an easier route from the area of Salt Lake City to the southern part of the Utah Territory, led one such effort. He left Camp Douglas, near Salt Lake, on May 9, 1864, and worked his way south to Fort Mojave, near what is now Laughlin, Nevada. The trip was

uneventful until he reached present-day Cedar City, Utah. The route over the desert from there to Las Vegas was extremely harsh and inhospitable. From Las Vegas to Eldorado was easier, but the journey from Eldorado to Fort Mojave was particularly brutal. The route then proceeded to Lewis Holes, an area west of Piute Springs named after Nat Lewis, and early Eldorado Canyon miner. After arriving at Fort Mojave, Captain Price declared that the route was unsafe and unsuitable for military use.

As an interesting note, during Price's journey his company came upon a stray cow at a watering spot near Lewis Holes and a place called Government Wells. Price's men killed and ate the cow, and the watering hole was formally named Stray Cow Wells in recognition of the event.

The accepted route that Captain Price and others traveled was called the Eldorado Canyon Road, which went from Eldorado Canyon to the Lanfair Valley and wound its way through the Castle Mountains, ending at Lewis Holes. Many prospectors traveled over the road, but written accounts have focused on the condition of travel rather than describing the trail itself.

This pioneer route came very close to present-day Searchlight. As Dennis Casebier points out in his Mojave Road Guide, ''Eldorado Canyon is usually a dry side canyon coming in to the Colorado River from the west about 25 miles below Hoover Dam. The route to the mines in the Canyon from Los Angeles took the Mojave Road to this point. From here the road angled off to the northeast via Lewis Holes toward the present Searchlight, then turned northward to Eldorado Canyon. Connections were developed from the Eldorado Canyon to Las Vegas and the main Salt Lake Trail. This point was a major road junction of the day. Here travelers had to decide whether to go northeast toward Utah or continue directly east on the Mojave Road toward Arizona and New Mexico. This intersection fulfilled the same purpose as the present junction of I–15 and I–40 in Barstow, California.''

Eldorado Canyon was the object of Anglo exploration long before Brigham Young's forays and the U.S. Army's expeditions, however. Clearly, the first white man to pass through or near Searchlight was Father Francisco Garcés in 1776. He left no physical sign of his passing, but his journals are sufficiently detailed to indicate that he came near the town.

Several of the mines in Eldorado Canyon have a long unwritten history that some believe goes back two centuries. Even though there is no written account of any Spanish or Mexican mining enterprise in the canyon, it is clear that such activity did take place. John Townley reports that mining likely went on there between 1750 and 1850. The mining operations never spilled over into Searchlight, but the explorations came very close.

From its earliest days, Searchlight had significant interaction with Eldorado Canyon. By the time Searchlight was founded, Eldorado had long been in operation. The contact was closest before the railroad came to Searchlight, when the mines and the people depended more on the river. The landing at the mouth of Eldorado Canyon was more important to the mines, however, than the river at Cottonwood was to Searchlight.

Reports like the following from a conversation with John Riggs contrast the operations in Eldorado and Searchlight: ''John Powers, who is still living and who at one time owned the Wall Street Mine, told me one evening about 1882 that an outfit of Mexicans of the better class rode up to his camp at the Wall Street, and asked him if he owned he mine. He replied that he did. They then said that they had a very old map of this country and that the Wall Street was marked on the map. The map was evidently correct as they had come straight to the mine. They stated that the map had been made very long ago, probably by early Spaniards.'' The Wall Street was one of the big producers of gold in Eldorado Canyon for many years. Conversely, no mine in Searchlight, with perhaps the exception of the Quartet, was worked successfully for more than ten years.

Though we do not know when the activity in Eldorado Canyon actually began, we do know that the mining district had a hectic and eventful history in the latter part of the nineteenth century. One account puts as many as 1,500 people there during the Civil War.

The first documented records of contemporary mining in the Searchlight area were provided by a mining company called Piute, which was formed in 1870. This company owned 130 mines in California and in southeastern Nevada. The most prominent of the Nevada mines was the Crescent, located about ten miles west of Searchlight. The company's promotional documents described a road that passed near present-day Searchlight and went to Cottonwood Island, below Searchlight on the Colorado River. The road was said to be favorable, with a broad, smooth path, much of it along a dry ravine.

In the early 1870s, a promoter named Johnny Moss attempted to develop a city just off Cottonwood Island. The town, which would be called Piute, was to be the freight head for the mines headquartered at Ivanpah, some forty miles to the west. The project never went beyond an artist's rendering, however. The proposed mines were later developed, but San Bernardino rather than Ivanpah emerged as the shipping terminus.

Indians traveled from the mountains above Searchlight to the river, creating relatively extensive foot traffic near the town's present location, and miners passed through the area in their never-ending quest for the gold and silver of their dreams.

When Searchlight was established at the end of the nineteenth century, the mining camp with the unusual name had a very primitive infrastructure, but it swiftly became modern. Within a few years Searchlight was as fashionable as any western town of its day. Its amenities were noticeably contemporary. A modern water system was quickly created, incorporating pumping facilities, a new storage tank, piping, fire hydrants, and meters. The town even had a telephone system, which for the time was very advanced, and a telegraph system. An outdated railroad was soon replaced by a more modern line that included passenger travel. Surprisingly, early Searchlight had a modern system of electricity and its own power plant.

The places of business in town were many and varied, including a barbershop, several saloons and hotels, a lumberyard, clothing stores, sundry shops, cafes, union halls, boardinghouses, schools, garages, and stables. The town even boasted a hospital with doctors and, of course, a newspaper or two.

When the mines' production waned after 1908, the businesses slowly began to cut back and in many instances simply failed. The decline, though sporadic, was technologically regressive. By the late 1940s and 1950s there was very little left of the modern Searchlight. Fires and a lack of prosperity had ravaged the once thriving community, and now there were no barbershops, no hotel, no lumberyard, no clothing store, no sundry shops, no union hall, and not even the trace of a union. Of course, the need for a hospital had long since ceased. There was no doctor, not even on a part-time basis.

In the town's early days, especially with the coming of the railroad, the grocery stores carried a full line of food and merchandise. Fresh produce came from the farms around the area, including the river and Lanfair Valley, and beef came by rail, stage, and truck, as well as from the nearby ranches. Near its beginning, Searchlight had its own dairy, but the dairy and the farms didn't survive for long. A handful of ranches operated until the early 1990s, when arrangements were made to ban all cattle grazing from the area in order to comply with the federal Endangered Species Act.

Searchlight may have not been favored by nature, but in the years after gold was discovered, this desert place developed into a microcosm of a frontier settlement worthy of historical study.

Chapter 2, ''Money from Massachusetts''—what was the title of my first chapter? ''The Beginning.''

Chapter 2, ''Money from Massachusetts.''

The first accounts of the area around present-day Searchlight came from nearby Summit Springs, which, except for the workings at Eldorado Canyon twenty miles north, was the main center of habitation. The site was believed to be about three miles east of Searchlight, probably at what is now known as Red Well, which is just off the blacktop road to Cottonwood Cove, part of the new Lake Mohave formed after the construction of Davis Dam.

More than a century before the discovery of gold at Searchlight, prospectors combed the entire desert west of the Colorado River for numerous minerals and hard metals, including gold, virtually without success. They found float (loose rocks that when panned showed some value) in some of the washes, but no outcroppings of ore surfaced.

The discovery in Searchlight did not result from this initial investigation. The area had been closely prospected for many years; in Eldorado Canyon mineral exploration had been routinely conducted since the days of Spanish rule. The Colorado River, relatively close to Searchlight, had been freely navigated during the nineteenth century. The intercontinental railroad (the Atchison, Topeka, and Santa Fe) was built only twenty-eight miles to the south, and the U.S. Army and the U.S. mail were moved over the pass near Piute Springs even before the Civil War. So the geography of searchlight was not unexplored territory.

Some dispute exists as to whether the mining camp that would become Searchlight was discovered in 1896 or 1897. The latter date has been commonly used for almost a hundred years, principally because all federal government publications used it. The pioneers who settled Searchlight and their descendants later disputed that claim and have advocated the earlier date.

It seems clear that Fred Dunn, of Needles, California, about fifty miles south of Searchlight, had for many years corresponded with various eastern capitalists to secure investments in his mining properties. One of those with whom he communicated was a Boston investor named Colonel C.A. Hopkins. In one of Dunn's letters, Hopkins read a description of the Sheep Trail Mine, near Needles. The colonel replied to Dunn, expressing interest in the claim, but by the time the mail was delivered to Dunn, the Sheep Trail Mine was no longer available for purchase.

Dunn again wrote to Hopkins in Boston and told him that although he had been unable to secure an option on the property Hopkins originally desired, other mining claims were available. When he wrote the letter, however, Dunn actually had no properties to offer, so he hired John C. Swickard to locate claims for the consideration of $1 per claim. Swickard began work immediately, concentrating his efforts in the Crescent and present-day Searchlight areas. At

that time the Crescent Mountains, ten miles west of Searchlight, were the site of vigorous mining activity because of significant recent discoveries of turquoise. So the general Searchlight area was being investigated with some success before 1896.

When Dunn believed he had enough claims to interest Hopkins, he invited him to come for a visit to inspect the property. Hopkins came to the prospected area but purchased nothing, though he did retain Dunn to look for other properties.

Hopkins exhibited interest in the area around Searchlight because of the preponderance of low-grade ore, which was more than enough to intrigue him. Unfortunately for Hopkins, although Dunn had retained Swickard, the latter owned almost all the property that would eventually make up the claims that became the famous Quartette Mine. The only claims that Swickard did not own were two small fractions of 49.5 feet at either end of the vein that he first saw when he began his work for Dunn. These fractions were claimed by Fred Colton and Gus Moore in 1897. In order to obtain sole ownership of the entire outcropping of the vein, Swickard traded the soon-to-be-duplex mining claim to Colton and Moore in exchange for the fractional claims he wanted.

It seems clear that prospecting in the Searchlight area was inspired not only by Hopkins's investment interest but also the long-standing interest on the part of Dunn, Swickard, and others in the triangle area where Nevada, Arizona, and California met, near the Colorado River. By 1897 successful mineral exploration activities had already been undertaken in the Eldorado Canyon, Goodsprings, and Crescent areas.

Swickard was proud of his Quartette, and the meticulous work he performed for Dunn was evident many years later. His location monuments were unique. A Searchlight Bulletin more than ten years after the association carries a description of the monuments, which resembled a pawnbroker's sign consisting of two stones and a pebble. To locate a claim, a prospector would usually put in place a small post and attach a tobacco can to it with the claim notice inside. Because he was being paid $1 for each claim he located, Swickard moved forward in a rapid and wide-ranging fashion, claiming outcropping after outcropping.

Swickard decorated the Quartette property with large signs that carried this message: ''Any sheepherding sons of bitches that I catch digging in these here claims I will work buttonholes in their pock-marked skins.'' Since Swickard was always heavily armed, his threats were heeded.

Even though Swickard was extremely protective of his claims, he shortly sold them to the trio of Benjamin Macready, a Mr. Hubbard, and C. C. Fisher for a team of mules, camping equipment, and $1,100. Though proud of his effort in locating the Quartette claim, he sold because he had no faith in the property; he believed the outcroppings were a blowout of the vein and would have no depth. By today's standards the consideration he received for his claim seems paltry, but by the standards of 1898 and 1899 the payoff was significant. It had been known since 1896 that low-grade ore existed in the area that became Searchlight, yet no exploration of more than a hundred feet in depth had taken place, not even by 1899, when Macready sold the Quartette to Hopkins. There is some evidence that Macready obtained the interests of Hubbard and then combined his holdings with Dunn's before selling to Hopkins and Associates. The selling price this time was $150. Before Hopkins could accept the deal, the price was raised to $200. Highly insulted, Hopkins felt he should not consider the new price. His mining engineer, Leo Wilson, intervened and for an additional $50 Hopkins increased his fortune.

Dunn and Macready were forced to sell the Quartette property because they had been unable to raise the capital for an ongoing mining operation. After the sale, however, they remained involved in the new operation. Dunn served as the resident agent of the corporation, and Macready acted as Hopkins's superintendent. Each maintained a minor ownership, but the real financial force was the Bostonian, Colonel Hopkins.

Money from Massachusetts had a similar impact on another mining venture, in 1904, in the Robinson mining district of White Pine County, Nevada. James Phillips Jr., a New York financier, and Mark Requa, one of the owners of claims in the Comstock Lode, persuaded the Loring brothers of Boston to capitalize the Nevada Consolidated Copper company, which later led to Kennecott's massive copper mine and processing facilities near Ely. Some say that without Massachusetts money, that important Nevada operation could never have been developed. In fact, a look back through history shows that nearly all of Nevada's mining enterprises were funded from outside the state, except for a few operations developed later in the century by Nevadans like George Wingfield.

Mr. DURBIN. Will the Senator from Nevada yield for a question?

Mr. REID. I will yield to the Senator, without losing my right to retain the floor.

Mr. DURBIN. I hate to interrupt the Senator's history of Searchlight, NV, because it is something I would like to know a little bit more about. I think the Senator from Searchlight is going to fill me in about the history of his hometown, but I would like to ask the Senator, for those who may have just joined in this debate, if he could bring me up to speed as to where we are in terms of the business of the Senate with pending appropriation bills.

I ask, through the Chair, are there still appropriations bills that need to be worked on and resolved before this Senate will have finished its work? If so, could the Senator tell me if the schedule announced by the Republican majority leader this week is conducive to finishing that schedule?

Mr. REID. I say to my friend, through the Chair, we have worked very hard to complete a schedule the country could be proud of. The distinguished majority whip came to the floor today and talked about the accomplishments of this Senate. He talked about the 10 appropriations bills we have passed. Well, what he did not mention—and I am sure it was an oversight—is that that could not have been done without the absolute, total cooperation of the Senate Democrats. Those bills passed because we worked to help them be passed.

I say to my friend, we called our floor leader, who does a wonderful job, and he worked with me to make sure we worked with the majority to pass the appropriations bills. The Senator from Illinois is a distinguished member of the Appropriations Committee. We worked hard to get that done.

In fact, I repeat—and repetition is part of the answer—we had agreed, the minority agreed, with what the majority leader wanted: Let us work November 10, let us even work November 11, so we can complete these appropriations bills. We said, okay. We went back to our Senators. They were not happy about that, but they understand Senator DASCHLE is our leader and we follow the leader, with rare exception.

The decision was made almost 2 weeks ago to work on November 10 and 11, and we worked so hard. We wanted to get out of this place. We have people at home to take care of. Our responsibilities are more than in Washington, DC. We have hearings we need to conduct at home. We have events we need to go to, constituents to take care of, offices to oversee. So, I say to my friend, we worked so hard.

All of a sudden, we turn around and there is a hot poker that sticks me right in the eye. What is this hot poker? There is a decision made, in spite of all our hard work, we are going to spend 30 hours, starting Wednesday at 6 o'clock until 12 o'clock Thursday night, to talk about how poorly the majority has been treated about judges, even though the judicial vacancies in our Federal courts are at a decade-and-a-half low, although we have approved 168 judges for this President. We have turned down four judges—well, not judges. We have turned down two judges who want to become different kinds of judges. We turned down another man who works downtown and makes a lot of money, and we turned down the attorney general of Alabama—4 out of 168.

The Senator from Illinois works on the Appropriations Committee. OK, so we learned that is going to happen. Some questions come up:

What are we going to do Monday?
I don't know.
Are there going to be votes?
I think so.
When?
I don't know.
What are we going to do Tuesday?
Well, we'll decide later.

Tuesday is a legal holiday, by the way.

What is going on here today is an effort to show the world that the Senate is unlike any other institution in the world. In the U.S. Senate, one person has a lot of things he can do to be involved in what is going on here. I am here today representing my Democratic Senators. There may be one or two who disagree with me, but not more than that. They know that I am here speaking for them. They know they are not Members of the House of Representatives, which works like the British Parliament. If you are in the minority, tough; you are going to get run over. Not the Senate.

So the majority leader, who is new at his job—I like him a lot. He is a fine man, dedicating his life to public service. I appreciate it very much. He is a distinguished surgeon. He is a man who devotes whatever little off time he has to helping those in countries far away less privileged than he. I have a great

deal of respect and admiration for the majority leader.

But he has to learn, as I am sure he is, that the Senate is a partnership, a partnership between the majority and the minority. We want to be treated fairly in this partnership. To have 30 hours spent on an issue that involves four people, who have jobs—they are working, they have jobs—30 hours for four people is not fair.

Mr. DURBIN. Will the Senator yield for a question?

Mr. REID. I will yield to my friend from Illinois without my losing the floor.

Mr. DURBIN. I ask the Senator from Nevada, is he representing that the Democrats in the Senate are prepared to work with the Republicans in the Senate to pass the remaining appropriations bills so we meet our obligation under the Constitution in a timely fashion? Is this a filibuster to stop taking up the appropriations bills?

Mr. REID. I say to my friend, we not only can say what we will do, but we can talk about what we have done. We have a record of accomplishment of working with the majority. We worked very hard, not only on appropriations bills but other important pieces of legislation. The Fair Credit Reporting Act, that was difficult to get up from our side. We got it up. We had a very fine debate. That bill is now on its way, we hear, to becoming law.

The Healthy Forests initiative—that was a hard piece of legislation to get passed out of this Senate, but we did it. We did it because we cooperated. Either one of those two bills I mentioned, Fair Credit Reporting and the Healthy Forests initiatives—it would have been easy to spend a week on each one of those. We didn't do that.

We have a record of accomplishment. We share the accomplishments that were laid out by the Senator from Kentucky today. And I say also, respectfully, the only reason we did not pass more appropriations bills last year is we didn't get the same cooperation that the majority has gotten from us. But that has happened in the past, and we are now here where we are today.

We are part of the process. When the history books are written—and they will be written—I think they will look back on this decision made to address, out of the very important things focused in the eye on the American people—a war in Iraq, a war in Afghanistan, a war on terrorism globally. It is difficult to comprehend why that alone, together with the economy which is in such desperate shape, and problems dealing with health care, those who are medically uninsured, people who are desperately poor and need to be helped, our educational system—we could talk about any one of those and historians would think that is something we should do.

No, we are going to take 30 hours. When is the last time this Congress has spent 30 straight hours doing anything? Anything? What are we going to spend 30 hours doing? Thirty straight hours we are going to spend talking about four judges who, combined, make $1 million a year, one of whom makes a half a million dollars a year, all of whom have jobs. I think our priorities are a little out of kilter here—as I go back to my book.

Mr. President, Chapter 3:

One of the real difficulties facing early prospectors in southern Nevada was that to file a claim, they had to travel more than 200 miles to Pioche, a trip that took at least ten days. This presented great hardship, especially in the winter months, when the weather conditions around Pioche could be severely inclement.

As early as 1898, articles appeared in periodicals touting the discoveries made in the Searchlight area. The references were actually to Summit Springs, with directions to the specific site, for Searchlight had not yet been named. The most definitive citation observed the following: ''At this point, fifty miles north of Needles, California and some ten miles west of the Colorado River, there is some excitement caused by a promising gold strike made by a Mr. Colton. His first shipment of the selected ore yielded at the rate of 72 ounces per ton. He is now shipping a carload that is expected to produce some 200 dollars per ton. Conservative miners who have recently visited the locality are pleased with the outlook in this vicinity.''

On July 20, 1898, the mining district of Searchlight was formed. The place chosen for the undertaking was the only frame or wooden building in the whole camp, a little shack located near the present-day Cyrus Noble Mine, not far from where the Santa Fe Railroad depot would later be situated. The founders were described nine years later as a ''small bunch of adventuresome spirits who had undertaken the task of unbuckling the girdling of the gold that encompasses this immediate mineralized section, and [took] advantage of the privileges allowed them under the United States mining laws.''

The group of miners and prospectors involved in forming the district drew up a set of bylaws and regulations. Rather than drafting a list of crude, misspelled rules, they put into effect a concise, systematic, and businesslike set of standards covering every point necessary for the filing of a mine claim.

The formation of the mining district did not obviate the need for the ultimate filing with the county recorder in Pioche, the seat of Lincoln County. Because Pioche was so far away and winter weather often made travel impossible, principals were allowed to establish the priority of the claim by filing it initially with the district recorder, then transfer the documentation to Pioche at a convenient time. This arrangement prevented many claim disputes. The original papers of formation were written on ordinary notebook paper in handwriting and then pasted in a rusty book, which as of July 19, 1907, was still preserved in the recorder's office.

Those who signed the formative papers were E.J. Coleman, who acted as chairman; G.F. Colton, who acted as recorder; Samuel Foreman; S. Baker; F.C. Perew; F.W. Dunn; H.P. Livingston; C.C. Fisher; T.B. Bassett; J.F. Dellitt; W.O. Camp; W.G. Lewis; G.B. Smith; and E.R. Bowman. It is interesting that the two accounts of the formation of the district agree on everything except one of the signatories of the handwritten document establishing the mining district. The Searchlight Bulletin of July 14, 1911, lists a woman by the name of Mrs. Hattie Cook as one of the signers, but an earlier account in the same paper on July 19, 1907, does not mention her name. It may have been merely an oversight that the name of the only woman who signed was left out, or it might have been a subtle denial of a woman's role in the founding of the town. Hattie Cook did, however, subsequently locate her own mining claim, the Flat Iron.

Many claims had been recorded in Pioche before the formation of the Searchlight district, including Fred Colton's initial discovery, which started the rush to the Searchlight area. But the first claim actually recorded as ''Searchlight,'' called the Happy Jack, was located on May 3, 1898, just a few days before the formation of the new Searchlight district. This initial claim was located by J.F. Dellitt, one of the people who formed the district. The discovery of the big claim by G.F. (Fred) Colton on May 6, 1897, was not actually recorded in Pioche until the next January. From this example alone it is clear why it was necessary to form the district.

By October the mining camp had its own post office. That same winter many more claims were filed, with the accompanying speculation that all of them would yield riches. These reports sparked an increase in the flow of people to the new camp.

The development of Searchlight came at an opportune time in the history of Nevada, since the Comstrock Lode was all but exhausted by the time Colton struck gold in 1897. The shipment of ore from the Searchlight district followed a twenty-year slump in Nevada mining and gave the state increased visibility nationwide.

It later became apparent that any ore of significant value in Searchlight would be found at depths of more than 200 feet. Extracting ore at that depth was usually prohibitively expensive for individual prospectors; consequently, many operations followed the example of the Quartette and consolidated their efforts.

The Engineering and Mining Journal often reported on such consolidations. Among the transactions recorded there was the New Era Mining Company, which incorporated in 1900 with $300,000 in capital, a significantly large amount of money at the time. The Duplex claim was developed with financing out of Riverside, California, allowing the construction of a mill and extensive underground development. The Searchlight Mining and Milling Company, known thereafter as the M&M, was capitalized in 1899 with sufficient financial resources for continuous work until ore was finally found in 1904.

But the Quartette was the mine that propelled Searchlight out of the ranks of insignificant Nevada mining towns. The Quartette was a great mine by any standard, and its dramatic success allowed Searchlight to become a mining camp of world-class proportions.

The finest mine in Searchlight almost never came into existence, however. The original capitalization by the Hopkins group was soon expended, but more money was sunk into developing the mine. Suddenly, Fred Dunn, the company's resident agent, acting on instructions from the owners in Massachusetts, ordered the foreman, Jack Russell, to stop work. Russell politely but firmly informed Dunn that he took orders only from superintendent Macready, who was in Los Angeles. Dunn then contacted Macready in Los Angeles by telegraph, ordering him to close down the mine. Macready could not return to Searchlight for four days, since the train from Goffs to Manvel ran only three days a week. He did not receive the message from Dunn until Thursday, so he had to wait for the Monday train. Instead of biding his time until the train ran, Macready wired two words to his foreman: ''Crosscut south,'' instructing the men to continue work but to extend the work at an angle rather than straight down.

When Hopkins originally purchased the Quartette, the shaft was 100 feet deep. At the time of the apparent depletion of funding, the shaft had reached the 300-foot level, and the findings were not encouraging. In fact, the ore was averaging only $3.84 in gold per ton. Since all of the ore in other Searchlight mines was being found at depths of less than 100 feet, Benjamin Macready was actually charting unknown territory when he ignored the instructions from his owners and ordered the miners to continue. When he arrived in the camp four days later, they had struck a bonanza—and they had reached the ore after only two more shifts. By the time the mining boom ended, the Quartette accounted for more than 50 percent of all the gold taken out of the Searchlight mining district.

Twenty-three miles southwest of Searchlight was a railroad connection, originally called Barnwell after the first telegraph operator at the station. The Quartette and other Searchlight operations had to haul ore over this twenty-three miles of incredibly rough terrain in freight wagons to the small railroad line, originally called the Nevada Southern and then the California Eastern. From here, the ore was shipped to the central complex of smelters and mills in Needles, California. It was a time-consuming and expensive operation. To curry favor with the Atchinson, Topeka, and Santa Fe, to which this thirty-mile line connected, in 1893 the small railroad changed the name of Barnwell to Manvel, for the Santa Fe president. The small railroad was taken over by the Atchinson, Topeka, and Santa Fe in 1901. Shortly after Searchlight was discovered, the president died, and the name of the site was changed back to Barnwell. Ultimately, the railroad built a line to Searchlight.

With the significant gold production at the Quartette, and the long, hard haul to Barnwell, management agreed to finance the construction of a mill at the Colorado River, about fourteen miles east of Searchlight. The haul to the river made sense because the load would be heavy going downhill and the freight cars would be empty on the arduous trek back up the hill. The construction of the mill at the river also solved the problem of the lack of water in the immediate Searchlight area. In fact, even at the 300-foot level, where the big strike had occurred, there was no sign of water, at the Quartette or at any other place in the camp.

Building the mill was not a difficult engineering task, but constructing a railroad to the river was more complex and expensive. It was, however, necessary in order to save costs in the production and processing of the ore, and so the decision was made to proceed. The construction of the mill and narrow-gauge railroad took nearly a full year, until May 1902. The mill ran continuously until June of the following year.

A significant water supply was finally reached at the Quartette about the 500-foot level, at just about the time when the mill and railroad construction was completed. The discovery of water in the mine reduced the need for the riverside mill.

I am up to chapter 4. We are marching along with my book. As I said, it was quite a job to write it. I am sure it has been a harder task for some people to read it, but it is something I am proud of. As I said, it sold well at Searchlight. But, of course, that is not much in the way of large sales. I have about 25 more chapters to go. The chapters are not long. That is the good news.

I will take a little sip of water. That is pretty good today. That is all the water I have drunk. I have been pretty careful in my water intake.

The PRESIDING OFFICER (Mr. ROBERTS). Without objection, it is so ordered.

Mr. REID. Thank you very much, Mr. President. I remember the first time I talked for an expended period of time beginning my first year. Senator BYRD was the leader. He has never taken credit for this, but I think he probably was behind this. He kept bringing me water, and I didn't realize that was something I shouldn't have been doing. So I have learned my lesson since then. It is fairly easy to do. Not drinking a lot of water is more comfortable.

Theories about how the town of Searchlight was named have provided ongoing controversy among the area's residents almost since the founding of the town. One of the first mentions of the name Searchlight occurred in a mining journal of February 11, 1899: ''Miners flocking to the Searchlight camp located about 100 miles north of Needles. Highgrade gold quartz veins have been discovered.'' Note that the specification of Searchlight's location is off by almost fifty miles—Searchlight is only fifty miles from Needles, not a hundred miles.

After Colton's initial discovery, the exploration and mining activity began in earnest. It is noteworthy that even though Colton and his family lived in Searchlight throughout most of the next fifteen years, with brief visits to California, neither he nor the family commented on the initial prospected discovery. No interviews with George Frederick Colton, the founder of Searchlight, can be located in which he explains the details of his location of the Duplex, or even how the name Searchlight was assigned. Several competing versions of the town's naming have been proffered, and Colton neither confirmed nor objected to those differing versions. For example, descriptions of how the camp got its name appeared in early Searchlight newspapers at a time when Colton was a prominent citizen of the town. In the decades following the decline of Searchlight, he came in and out of the town, and members of his family lived in nearby Las Vegas, but he left no traceable interview in which he discusses the naming of the camp.

Mr. DURBIN. Will the Senator from Nevada yield for a question?

Mr. REID. I have to finish a sentence. This is a significant point of the story.

During this time, however, other theories emerged about the naming of Searchlight.

We are getting to a point—I want your attention, Mr. President. We are getting to a point now in this book where we are going to find out how Searchlight got its name. I hope the Chair will give me your full attention because it is one of the most asked questions there is: How did Searchlight get its name? That is what this chapter is all about. I hope you will give me your full attention.

I am happy to yield to my friend from Illinois for a question without my losing the floor.

The PRESIDING OFFICER. The Senator from Illinois is recognized.

Mr. DURBIN. Mr. President, the Senator from Nevada anticipated my question. I was going to ask him how Searchlight got its name. I understand he will reach that point in the book.

The PRESIDING OFFICER. That is the case.

Mr. DURBIN. I ask a question of the Senator from Nevada. There are a number of colleagues asking, in terms of the presentation of the Senator from Nevada, if he has a goal in mind in terms of what he would like to present to the Senate before we reach a point where we might take a vote; has the Senator thought of that point?

Mr. REID. I am happy to respond to that. I have not heard anything about votes in the last 6½ or 7 hours. That is a reason I am here.

I will put this exciting book down for a minute and respond to my friend. I know the Chair wants to hear that before the 8 p.m. hour arrives so he does not have to come back and ask me tomorrow. That is one of the reasons we are here. We were not told, other than there will be a vote sometime today. I personally thought—and I think my distinguished Democratic leader, Senator DASCHLE, agreed—that really was not fair. We tried to probe and find out what there would be. We know there are 30 hours starting Wednesday. We read about that first in the newspapers. As far as votes, I want to make sure those people with planes coming from the West will not be jammed with an early vote. I heard there would be votes at 2 or 3 and people would leave so they could go to their events on Veterans Day. We did not know.

As I said earlier, I say to my friend from Illinois, around here we have to work together. No one knows that better than the Presiding Officer, with whom I worked on a close basis on the Ethics Committee. I cannot say enough about the Senator from Kansas and his leadership. It was significant, strong. It was for the good of the institution.

I say to my friend from Illinois, around here we have to get along. To get along, we have to work together. As I said, speaking for my Senators, including the Senator from Illinois, who is not only a fellow Senator but a close personal friend, someone I care about a great deal—we have been together here for 21 years. I say to him, I don't know. Somebody can let me know, and I guess someone from the majority can ask me to yield and ask me a question, Did I know they were scheduling a vote at such-and-such a time? I don't know if they want more votes tonight. I don't know.

In the meantime, I am a soldier with a mission. That mission is to tell people around the world, CSPAN and people within the breadth and width of my voice, about Searchlight and how it got its name.

The PRESIDING OFFICER. Forward march.

Mr. REID. Mr. President, I hope someday we can do maybe like a Democratic retreat, maybe a Senate retreat, in Searchlight. We only have one motel, but we are working on others. We have a McDonald's now, one of the highlights of the economic life of the last 25 years of Searchlight. You can get a McFlurry there, a Big Mac, really good fries. I am not a big fry fan. Good fries. I am kind of a McFlurry fan, myself. I am very happy; some of my

friends built that place. They have a concession, the Herbst family. They have a flag that flies over McDonald's, and I am not exaggerating, it must be 50 feet high, and I don't know how long it is. You can see it for miles around.

Anyway, Searchlight is coming along, and before too long maybe we can have a Senate retreat there. Colorado is not far. Below Searchlight we have the beautiful Lake Mohave, part of Lake Mead Recreation Area. Searchlight is a good place, and we need to find out how it got its name.

One version insists that it was named for an early miner in the area, Lloyd Searchlight. There is, however, no record of anyone by that name who ever lived nearby. The confusion developed when a man known only as Mr. Lloyd started the Lloyd-Searchlight Mining Company, a company that didn't begin operations until the Searchlight mining district had long been formed and named.

A Bulletin headline in 1906 read, Santa Barbarans pay $40,000 for Bonanza Prospect. Lucky owners retain large interest—will be known as Lloyd-Searchlight. The article goes on to state that the development work would be under the direction of Mr. Lloyd. ''Although the local management is preserving clam-like silence, it is learned on the best of authority that the Lloyd-Searchlight has struck it rich. In point of discovery and development Lloyd-Searchlight is the foremost property at Camp Thurman, fifteen miles south. Its owners all reside in Santa Barbara, California.''

I only have two paragraphs for Mr. Lloyd but, frankly, that is about a paragraph more than he deserved. It was hard to fill all these pages. I gave him an extra paragraph.

I say to these pages, some of whom I am sure will be historians, I hope they will remember as they study history, this history lesson tonight. It may not be the best, but it is history and it is certainly better than some of the speeches we have heard.

A second version is more humorous. Prospectors congregating at Summit Springs before the formation of the Searchlight district used to joke about the miners John Swickard and Joe Boland, who patiently ground their very low-grade ore in a mule-drive crusher, saying, ''There is ore there alright, but it would take a searchlight to find it.'' It was recalled that they all laughed afterward, but when Fred Colton turned up some high-grade ore three miles west of Summit Springs, he remembered this joke and called the location Searchlight.

A Searchlight newspaper article lends credence to this version because Colton and various members of his family were living in Searchlight when it was written. Logically, if the story were inaccurate Colton would have denied it. Conversely, it could also be argued that if the story were not true, Colton would not want to contradict it, since the tale gave him greater standing in the town.

The newspaper stated in 1906: ''It might be interesting here to relate how the camp originally got its name. A number of prospectors had discovered some float in the valleys to the east and west of town and had a camp established in a gulch near where the *Cyrus Noble* is now located. Coming into camp one evening tired, sore and disgruntled, Fred Colton, the first discoverer of the camp, threw his canteen on the ground and exclaimed, 'there is something here boys, but it would take a searchlight to find it.' Two or three days later he found the ledge of the present Duplex and named it Searchlight. And this was the christening of the camp.''

Another recently unearthed version of the town's naming was buried in a 1911 Bulletin article. In naming the mine and the town, Fred Colton was impressed with the wonderful view from the Duplex Mine, which was situated on a large hill overlooking the town. He is reported to have said, ''This would be a nice place to mount a searchlight.''

Yet another version of the unusual name Searchlight originated with a box of wooden matches, . . .

Maybe these young pages don't know what a box of wooden matches is, but when I grew up they were about all we had. You had a box and pulled out these wooden matches to light your fires. But there was a name—well, anyway, let me read my book:

Yet another version of the unusual name Searchlight originated with a box of wooden matches, which were essential for lighting cigarettes, cigars, stoves, and for general survival in the early part of this century. One of the most popular brands was named Searchlight. The story is told that a handy box of Searchlight matches was seen at the camp and inspired miners to give the name of Searchlight to the desert mining district.

George Colton's grandson, Gordon, has perpetuated the matchbox version of the tale, spreading word that this is how the town got its name. Gordon was very loquacious, but he did not base his story on conversations with his grandfather. He never lived in Searchlight until late in his life, and the box-of-matches version of the story didn't appear until many years after the camp was founded. (As an interesting side note, Gordon was alleged to have played five years of high school football at Las Vegas High School before embarking on a professional football career with the Los Angeles Rams. His classmates even assert that he was All-State at two different positions. This is confirmed by his son, Stanton, a former Nevada state treasurer. In his old age, Gordon became the constable and deputy coronor of Searchlight.)

Most longtime residents of Searchlight agree that the name came from Colton's being told—or saying—that one would need a searchlight to find gold, but there is no surviving interview at any time with the original developers of the mining district that would shed light on the authenticity of this version. The Searchlight newspaper opined, however, that this version had ''the widest credence.''

The most credible version of how Searchlight got its name is Colton's story of the need for a searchlight to find the ore. A few have felt more support for Gordon Colton's box-of-matches theory. But before a jury both his story and the other versions would fail. Historian John M. Townley agrees, conceding that the most logical version of the name's origin is the one that centers around needing a searchlight to find the gold, even though Colton never commented on the naming. Townley does confirm, however, that even five years after the discovery of gold in Searchlight, no one was certain as to the origination of the name.

George F. Colton, the town's founder, was rarely interviewed on any subject having to do with the beginnings of the town. In 1906 he returned after about a year's absence from Searchlight and said, ''I came here in 1897 and pitched my tent near the present site of the Searchlight Hotel. . . . This is not only a camp without a failure, but a camp with a future. Jane Overy, resident historian of Searchlight and the curator of its museum, insists that the place where Colton pitched his tent is the present location of the post office parking lot.

Possibly another reason that Colton did not make a big deal out of his discovering the town and naming it is that perhaps in his mind he didn't do either. It is clear that there was significant prospecting in the area of Searchlight long before 1897. This is confirmed by many sources, not the least of which is a news article describing Colton as ''the father of Searchlight, because of the fact that he discovered the first interesting claims in the camp and built the first house in town.'' The article recognizes him not as the discoverer of gold in Searchlight but as the discoverer of the first interesting claim. George Colton died in California in 1916.

The same newspaper rightfully calls John Swickard the father of Searchlight. In the early nineties, Swickard prospected through this territory. His locations were the first in the district. As early as 1896 he enlisted the backing of Colonel Fred Dunn and, in 1897, he established the first permanent camp, at Hall's Well.

In short, Searchlight is a camp with more than one father.

Mr. President, we are moving right along. We are headed into chapter 5, which is, just to give a little preview of chapter 5, called ''The Big Strike.'' It talks about the only really big mine in Searchlight. There are lots of mines, hundreds of them. I was there Saturday from about 10 o'clock at night to about 9:15 Sunday morning. As you drive through there, you can still see all these old abandoned mining claims. Most of them have been ordered by law to be fenced because some of them are very dangerous.

I see my friend from Idaho on the floor today.

One of things I hope we can do—I know he and I have worked very hard to do this over many years—is to do something about the mining law that is so old and so antiquated in many ways. We have been willing to reform that, the Senator from Idaho and the Senator from Nevada, but the problem has been those people who want to change the law want to change it so they get everything and the people who create the thousands and thousands of jobs—the highest-paid blue-collar jobs in America are in the mining industry.

I would hope the Senator from Idaho will work with us, as he has in the past, to try to figure out a breakthrough next year on how we can do that. There are some real injustices out there now. I was glad to see this administration overturn the mill site opinion that was written by one of Secretary Babbitt's assistants, which was one of the most illogical legal opinions I had ever seen on mill sites. This administration reversed that. I told Secretary Norton, when they did that, I would applaud publicly what they did, and I did do that. That helped quite a bit, having done that.

But one of the things I think is so bad is we are doing so many things to damage the ability of mining companies to not only continue their operations but develop new operations. I hope before too long we can change

that law. There is a way we can compromise this and give the environmental community some of the things they want but also certainly give the mining industry what I believe is a very powerful tool, which is one of the few businesses in America today that is a net exporter. We produce gold, and we export gold. It is wonderful we do that. We need more businesses in America where we produce more than we can use.

So I hope the Senator from Idaho—and I know he will—will work with us next year to figure out some way to make a breakthrough through this morass we find ourselves in. I have been working on this for many years to try to come up with some kind of compromise.

The mining companies bent over backwards for a compromise. We had a compromise in the Interior appropriations bill a number of years ago. We took it to conference, and the people in the House said: No, it is not good enough for us. We want everything. They got nothing. That has been now 7, 8 years ago, and that is too bad, really too bad.

Mr. President, chapter 5 is called ''The Big Strike.''

The purchase of the Quartette by the Hopkins group was important to the success of Searchlight. Without the large initial infusion of capital into the Quartette operation, the mine would not have been sunk deeper than any other mine in the history of Searchlight. Without the deep shaft and the subsequent huge ore strike, mining in this area would never have developed. The extensive mining and exploration that later occurred was all based on the early success of the Quartette.

The Searchlight, the newspaper of early Searchlight, promoted the town as the ''camp without a failure.'' Until 1907, when the newspaper changed its name, this phrase was on the masthead, proudly broadcasting the area's prosperity to the state and nation. The newspaper hoped to attract new capital and people to the southern part of Nevada.

Shortly after the fateful telegram was sent by Macready, the Quartette seemed destined to become a real bonanza. by 1903 Searchlight was the talk not only of Nevada but, according to the local newspaper, of the whole mining world. At what seemed to be the height of Searchlight's success, however, labor problems erupted.

Union activity in Searchlight was the result of organizational efforts of the Western Federation of Miners (WFM), founded at Butte, Montana, in 1893, shortly before the discovery of gold in Searchlight.

Mr. President, this strike about which I refer was a union strike, about miners who struck.

Some have written that the creation of this union was the ''birth sign of the coming militant industrialism of the Industrial Workers of the World. In the first decade of the twentieth century this union enjoyed success in its activities in goldfield and to a lesser extent in tonopah.''

A costly labor strike almost brought the mining boom in Searchlight to a standstill in 1903. Even though the union focused on the Quartette, other operations panicked, and most closed down until the strike was resolved.

The union strike, called on June 1, 1903, was precipitated by a number of disputes, primarily a law passed on February 23, 1093, by the Nevada Legislature that limited the workday to eight hours for most mining-related jobs, particularly underground positions.

On June 1, the mine owners posted a notice ordering all workers not affected by the new law to work nine hours. This gave the union an issue. It is interesting to note, however, that the only workers affected by the Quartette order were three men who did not work in the mine or the smelter but were hoistmen and trammers who were not covered by the new law. The law stipulated an eight-hour workday not only for underground miners but also for those who worked in smelters and all other positions involving the reduction of refining ores and metals. The strike was ostensibly called because of these three men, but it also provided an opportunity for this new labor organization to flex its muscles.

Initially the union had the support of most people in town, who thought that the workers deserved better pay and improvements in working conditions. Even the newspapers that covered Searchlight, the Searchlight and the DeLamar Lode, appeared to favor the goals of the striking workers. It also was clear that the real issue was not the basic economic one but whether labor or management was to control the Searchlight workforce.

After the company's notice was posted, the union committee asked the mine superintendent what would happen if the union called the workers off the job. Management replied that the mine would be closed. In fact, the mine was closed on June 1, without the union's ordering work stoppage.

Anticipating union action, the owners of the Good Hope Mine and the Duplex also terminated operations the day after the shutdown by the Quartette owners. The provocative nature of the mine owners' actions is clear when one realizes that in all three of these mines, only three men were working nine-hour shifts, and that was at the Quartette.

At first, public comment about the way the union was conducting the strike was very positive. The press and Searchlight residents were favorably impressed that there was no violence. In fact, the union helped foster positive public relations by allowing four of its union men to be engaged in working the pumps at the lower levels in the Quartette, where water would have accumulated, damaging equipment and the workings in the shaft and drifts, if the pumps had not been kept operating.

The union movement in the western United States was in its infancy at this time, especially in the mining industry. Strategies for resolving impasses between labor and management were not well developed, and the two parties were experimenting with ways to end disputes like this. The union wanted to appear tough and strong, even resilient, and the mine owners wanted to put an end to the union before it gathered strength.

In the early days of the strike there was considerable talk of arbitration, but that was very short-lived. In the DeLamar Lode of June 23, the prospects for settlement were more vague than ever. In fact, the mine owners and managers had left for Los Angeles almost as soon as the strike started. The owners indicated they would receive union representatives only in Los Angeles, stipulating that all negotiations would have to be conducted somewhere other than in Searchlight. This action only made relations between the warring parties worse, since during the early days of the strike various union representatives from the national office often visited Searchlight with the intent of negotiating with the owners. They soon learned there was no management to meet with unless they went to Los Angeles. The papers reported: ''J.H. Vaughan, representative of the miners union, was in the city Monday to see if the mine owners had anything to say, or to see if they were desirous of a conference.'' The same newspaper article observed: ''John C. Williams, Vice President of the Western Federation of Miners, is expected to be in camp tonight to take hold of the union and end the strike.''

The local newspaper strongly condemned the owners' and managers' retreat to California at the strike's inception. Precisely, the Searchlight also reported in its June 26 edition that it was the employers' intention to create an issue to discredit the union. Again, the paper and the townspeople clearly were on the side of the miners and not the owners.

Because unionism was new in Nevada, and this type of labor unrest was fresh in the western states, the union representatives were continually trying to justify their ability to sustain a long strike. When the owners, in effect, refused to negotiate, the union announced that it had ample funds to support the union miners for an indefinite period of time. The company responded by announcing a policy inviting nonunion men to apply for jobs.

As the contention continued, so did the competition for the most marketable story describing the strike. Since the Searchlight was published in Searchlight and was the paper closet to the controversy, it seemed always to paint a picture of peace and serenity during this time, wanting only to project the image of a boomtown. The DeLamar Lode was the newspaper in the town of Delamar, located in what was then the upper part of Lincoln County, about 30 miles from Caliente and 150 miles from Searchlight. On August 4, only two months after the beginning of the dispute, the Lode opined that only the bad people in the county were left in Searchlight. The Lyon County Times, published in Yerington, about 350 miles north of Searchlight, reported that the miners at the Quartette struck to have their workday reduced from twelve hours to eight. Such a report was ridiculous; at no time in Searchlight's brief history had the miners been required to work more than nine hours. The Searchlight wrote a rare scathing editorial, attacking those who engaged in perpetuating false rumors and emphasizing that the strike was being conducted in a peaceful, orderly manner, on issues that were strictly a matter of principle.

On July 3, 1903, Judge M.A. Murphy of the state district court struck down the law establishing the eight-hour day in mining-related work, ruling it unconstitutional. The court declared that the legislation, being class in nature, was invalid because it separated mining and milling from other types of employment, violating the state constitution by taking property without due process. In effect, the court ruled that the Nevada Legislature had no right to dictate hours to miners and mill workers when it did not set the same standards for other types of work. Because of this, the owners were being forced to work their property under conditions that unfairly paralyzed them by having their employees work fewer hours than other workers.

Immediately thereafter, the union, through John Williams, a vice president, approved the strike despite the court's interpretation of the recently passed law. The union again declared its ability to withstand a long strike, since the WFM had supplied the funding necessary for the duration of the union activities.

Even though the owners and managers were not often in the vicinity of Searchlight,

they had obviously been plotting to ruin the union and end the strike. Their first move was to form the Desert Mine Operators Association. Although the association's bylaws prohibited discrimination against union members, everyone knew that the purpose of the organization was to stamp out the union. The association even included mines in California, as well as Searchlight's Quartette, Duplex, Good Hope, New Era, Cyrus Noble, Southern Nevada, and Ranioler. The formation of this association was the beginning of the end of the effectiveness of the labor movement in Searchlight. The owners began to investigate ways to reopen the mines with or without the union miners.

The commercial interests in town formed a citizens' committee to arrange a conference with the owners and the union and to act as a liaison, carrying messages of hope between the two warring parties. The Quartette officials, representing all the other companies, refused to talk to the union but professed a willingness to resume operations and to take back all former employees—with the same wages and hours that were in effect before the strike. Company officials also indicated that when the mines began making a profit again they would entertain a different wage scale. This decision by the owners meant that underground workers, as well as blacksmiths and engineers (who were traditionally treated like miners), would work eight hours and aboveground men would work nine hours. All others, such as laborers and those on temporary jobs, would work nine-hour shifts. The union rejected that offer, holding out for a fifty-cent raise and an eight-hour day for all mine-related work.

It didn't take long for businesses to start feeling the effects of the mines' closure. Though there was significant independent prospecting being conducted during the labor unrest, it generated very little commercial trade.

The first strikebreakers, two miners from Los Angeles, arrived in September. They didn't stay long, since they were persuaded by the union not to go to work. Several days later, two stagecoaches arrived with men who were to begin work at the Quartette. The Searchlight of September 25 reported that the Quartette had gone back into operation with thirty-five men on its payroll, including miners and guards. Even though this is a small number of employees, the company's action demonstrated its determination to get the valuable property back into production. Conversely, the union was doing everything it could to prevent the mine from adding employees, even stationing pickets at various locations, like Manvel, Ibex, Needles, Goffs, and San Bernardino, to deter the further importation of strikebreakers and other anti-union activities. The union also appealed to other labor organizations in Los Angeles and San Francisco, urging them to make every effort to keep workers from coming to Searchlight until the strike was settled, and it advertised in the Joplin, Missouri, area—the home base of the union—to warn hirelings of the situation in Searchlight.

By early October, however, the Quartette had started a stamp mill, located next to the mine. It was obvious to all that for the mill to operate the mine had to be producing ore. Nevertheless, the union still talked as if it was winning the dispute, even though it was apparent that the mine was operating with nonunion workers.

One incident that added to the excitement during these tense times was when the union learned that thirty strikebreakers were en route by train to Manvel, on their way to the Searchlight mines. The union organized a march along the twenty-three miles from Searchlight to Manvel to intercept them. After the long, grueling walk, however, they learned that not a single strikebreaker was on the train.

The editorial position of the Searchlight took its first turn against the union on October 2, noting that the union was hurting its own cause by not working harder to resolve the dispute. Recognizing that nonunion men were already being shipped in to work, the editor further elaborated that the new law, on the basis of which the strike had been called, had since been declared illegal. The article made the case that the two sides were crushing the life out of the new town of Searchlight and stated that the business of the town was being ruined and the storekeepers forced to operate at a loss. This was the first editorial calling for an end to the strike.

Just a week after this editorial appeared, the Quartette, the Good Hope, and the Southern Nevada mines were back to full operation. Simultaneously, the union suffered several other setbacks, including the arrival of twenty-one workers from Joplin, Missouri, and several more from the mines of Colorado. The strikebreakers went to work under the conditions that had existed before the strike began.

About this time, the Quartette opened its own general store and even built bunkhouses for its workers, which provoked extremely negative reactions from both the merchants and the general population. The Quartette, located about a mile and a half from the center of the city, was becoming its own town.

The Searchlight condemned the actions of the mine owners. They were particularly galling to the paper because it had recently run editorials supporting these companies. In desperation the paper called on the union to end the strike, but the union remained defiant. The newspaper finally declared that the union had lost the goodwill and sympathy of the community.

Even at its most intense, however, the strike in Searchlight was orderly and nonviolent. The sheriff from the county seat of Pioche periodically visited Searchlight to monitor the situation, always returning with reports of nothing more than rumors of disturbances. The entire period of the strike was unusually calm.

The peaceful nature of the Searchlight strike was similar to the minimal labor strife that the Comstock has experienced a generation earlier. The Western Federation of Miners formed its first union in southern Nevada in Tonopah in the summer of 1901, and Tonopah escaped any real labor problems until after World War I.

At nearby Goldfield, however, there were significant labor disputes, marked by numerous episodes of violence. The unions had obviously learned from the losses of the WFM in Searchlight, for they became powerful in Tonopah and Goldfield. In 1907 Goldfield was an armed camp. Several shootings occurred, with one reported death. Eventually President Theodore Roosevelt, at Governor John Spark's request, sent federal troops to quell the quarreling factions. In comparison, Searchlight had been very calm.

In January 1904 the courts again surprised the entire Nevada mining community with a long overdue decision. The Nevada Supreme Court overruled the district court and declared the wages-and-hours law constitutional. The reason for the strike had come full circle. But like its predecessor, this final decision did not change the fact that the union had been broken. The union continued operating in a strike mode for the next year, even though almost all of the union men had gone back to work. Those who returned to the mines were required to sign a card agreeing not to participate in union activities, pursuant to the Desert Mine Operators Association rules.

In 1907 the same card system was put into a place in Goldfield just before Roosevelt ordered federal troops to Esmeralda County. The right of the companies to have employees sign such a card was affirmed by the Nevada state legislature in 1907.

The strike had a tremendous impact on the new town. The merchants suffered in not being able to develop commercial enterprises as quickly as they otherwise could have. Many people experienced economic hardship as a result of the strike, and workers with known union sympathies were laid off. For example, James Lappin, foreman of the Quartette Mine, was laid off as a result of his union leanings. His wife, Lula, opened an ice cream parlor to provide income for the family, but the store failed and the Lappins migrated to Southern California where, at age fifty, James began a second career as a farmer. He died in Anaheim, in 1908, at age fifty-five, just about five years after being run out of Searchlight. James Lappin's story was repeated numerous times in the lives of the early inhabitants of this boomtown.

The labor-management problem in early Searchlight had a very limited effect, however, setting the progress of the town back for only about three months. Though the union and townspeople kept referring to the ''strike,'' in reality it didn't exist—the strike was actually broken early in the dispute.

As mentioned above, much of the friction was caused by the competing newspapers, the DeLamar Lode and the Searchlight. The Lode, for example, had the strike settled by September 20 when it reported: ''The backbone of the strike is broken. The Quartette landed a number of men on its property yesterday to begin work and to date things were moving as of old.'' The Searchlight was more cautious. In its October 2 issue, it reported: ''The strike situation that past week has shown little change.''

The strike did have other, unintended consequences, however. It was because of the pro-union stance taken by the Searchlight and some of its advertisers that the Quartette Company decided to start its own general store and other competing businesses at the mine site. The action was clearly an attempt to punish those businesses that went along with the union leaders.

The dispute also caused the company to focus on labor relations instead of on ways to improve the mine. One of the Quartette's managers said in December 1903 that if the strike had not occurred the company would have built a railroad from Ibex to the camp.

In just three short months, the union was vanquished. Though the exact date of the defeat is debatable, the conclusion is not. Union activity disappeared and to this day has never reappeared in Searchlight.

Mr. President, that is the end of chapter 5.

I got a call. The cloakroom called. I have a note that one woman from Frederick, MD, called. She likes the book. She called Barnes & Noble who said it would take 2 weeks to get a copy. She said it would be good if I would speak more slowly so she can hear and understand the book.

I don't think I can do that. I don't speak very fast to begin with. I appreciate her being interested, though. You can get it at Barnes & Noble. If she came to Searchlight, she could buy one right there.

As I said, Searchlight was part of the busiest two-lane road in all of Nevada. But we have been able to get four lanes there now, half the way. That helped a

lot. They opened it a couple of weeks ago. It is not hard to go to Searchlight. Lots of people go there. As I indicated earlier, we have a great new McDonald's there. We had a store there that was opened by a woman who was a fantastic artist. That young woman died at an early age, about a month ago. That closed that operation. But there is kind of a curio shop there. They would call it an antique shop here. They have old mining equipment and things of that nature. We have a nice restaurant and casino there. A longtime friend of mine added to inflation a lot about a year ago. For many years she advertised a nickel cup of coffee. She raised that to a dime. So now in Searchlight, you can drive through there and get a cup of coffee for a dime. You don't have to get anything else. I don't know how many people it draws, but she has a dime cup of coffee.

She hired a new chef. She had one many years ago named Bill. He loved to fish. The lake is only 14 miles away. He would get huge amounts of fish, save them up, and then Bill the cook would have a fish fry for the whole town. Great fish. But after he died, I have to tell you the food was not very good there. They no long refer to him as a cook. Now there is a chef in town. We have a chef in Searchlight. Every day, you see the special—things like stuffed pork chops, spareribs; he even had goulash one night. This guy knows what he is doing.

My wife and I look forward to going into Searchlight. My home is about a mile and a half, 2 miles out; we are still in the metropolitan area, I guess you would call it.

The town has grown since I grew up there. There must be 1,000, 1,200 people in the area. We love to go there now for one of the specials. So Searchlight is moving along.

We have a sewer system on one side of Searchlight. If you live on the east side of the highway, you have sewer. If you live on the west side, no luck: septic tanks.

I, was born there. I really left when I became a freshman in high school. I went back, of course, to visit with my parents. I fell in love with Searchlight. It is a place where I was born, where I grew up, and really developed a lot of the things I thought were right and wrong.

For many years in my congressional service, I didn't even have a real house. I had a mobile home I bought from my uncle, but I never felt good in it. So 2 years ago this next month, my wife and I, after we had gotten our five children through school and college, built ourselves a modest home in Searchlight. I love that place. It is such a nice retreat, going from the metropolitan Washington area out there 55 miles from Las Vegas.

We made a few mistakes in building that house. My wife actually did it. One of the mistakes she made was she put in a little sprinkler system and planted some stuff around the house. Well, the stuff was eaten by rabbits in about a week. They hadn't had a feast like that ever, probably. So we went to the extension service and said: We would like you to tell us what we can put in there that the rabbits won't eat—rabbitproof. They loved that. They came back in a week or so. We spent some more money planting again.

This was even better. The rabbits learned there was something there, and they finished this off in 3 days—3 nights. They won't eat in the daytime. Here we were. What were we going to do?

Looking around the desert, I noticed they didn't eat cactus, or I thought they didn't eat cactus. They didn't eat desert cactus. They ate my cactus. We planted a bunch of cactus. I can't imagine how they can do it, but they eat some cactus—not all of them. I don't know the names of the cactus they don't eat. Some of the names I know. They don't eat the cholla. They don't eat the beaver tails. They don't eat a plant that is not native to Searchlight, Ocotilla from Arizona, a long stringy plant with stems that go up very high. They don't eat those.

So I have replanted my house several times. They are good, these rabbits. What I did was, some of our big cactus, I told the cactus guy—Cactus Joe is his name—in Las Vegas. He brings his truck. ''Come and see what they ate, and bring something they don't eat.'' Oh, sure, they are happy to bring Tommy Lee and his crew out. They planted—oh, man, some of these things were big, beautiful green cactus. I got up the next morning, and they had ravaged my cactus.

They looked like these big things with big holes in them. They chomped them through. I called one of my friends in Las Vegas and said I needed some help—my friend Gary Bates. He responded and came out with some wire, pliers, and all that kind of stuff. We picked some of these cactus these rabbits wouldn't eat. Do you know, they figured a way to get through that wire. I don't know how they did that. I don't know how they got those big ears through there, but they did. They didn't ravage them; they just kind of chomped on them a little bit. I might be able to save some of them.

So that is my story of my cactus.

I was out there, as I said, Saturday night. I had dinner with a couple of my Senator friends in Searchlight. The first thing I did was look at my cactus crop. It was dark, and I couldn't see. I was pleased it wasn't worse than it was. We planted some more Ocotilla, which is rabbitproof, proven from prior plantings of my Ocotilla.

These rabbits are interesting animals. I used to always like those cottontails. In Searchlight, we have cottontails, cute little rabbits about so big. Then we have the big jackrabbits. I developed a strong dislike for cottontails because they are worse on my cactus than the jackrabbits.

Anyway, I will take a sip of water and go to chapter 6. I guess there is no word about votes around here, so I will just keep reading.

Let's see, at 8:16 it will be 7 hours. My only regret is I should have started earlier on my book. I was a little bit repetitive.

Before I start chapter 6, let me just say this. I understand the rules of the Senate pretty well, and I know today there could have been a vote offered by somebody if I hadn't gotten the floor. There could have been a vote on a motion to table somebody's amendment. I know the Senator from Arizona was going to offer an amendment because he told me so. Maybe it was an amendment the other side didn't like. I don't know. And tomorrow, or whenever we come in again, another amendment can be offered.

Under the rules of the Senate normally followed, when someone offers an amendment, the person who offers the amendment speaks on its behalf; those opposed to the amendment speak against that amendment. The person who offers it can speak for as long as they want, and the person who opposes it can speak for as long as they want. I wanted to make sure today that because of what we were told would happen, I was going to do what I could to see if it wouldn't happen.

I don't miss many votes. The only votes I have missed in recent years have been for my friend, the junior Senator from Nevada. I have paired with him on a number of occasions because of family issues; he has a young family, and I have been happy to do that. I don't mind missing a few votes. I was not missing them. I was here. But I am happy to pair. We used to do it a lot in the Senate. It was the thing to do. If somebody had something important, we would vote yes or no.

We have become so interested in voting records. We vote on things here that don't mean anything of importance. Most everything we vote on here passes overwhelmingly, but we have to have votes: I can't miss that judge's vote; oh, I can't do that. I say: It is going to pass; everybody is going to vote for him or her. Why worry about it? I can't miss a vote.

But anyway, I have paired with my friend from Nevada on occasion. The last time I paired with him, he had not been able to watch any of his son's football games the whole year because they don't play on Friday or Sunday.

He said: I sure would like to watch Trevor's game. I said: Go watch Trevor's game. It is more important than what we do on this occasion because a year from now, 2 years from now, your son's football game is going to be more important than the votes that happen here. I am glad he watched his son's football game.

My friend, Senator ENSIGN, is glad he watched his son's football game. The only point I am making is we have votes all the time. We can have a vote tonight. I do not care. I am going to be

here. It does not matter what time we have it. I am here all the time. We can have votes tomorrow, but I understand the rules of the Senate, and we have to work together.

I want the record to be spread, as it has been, that this 30-hour judges thing is not the way to run this place. It is simply not right. If we tried something like this I hope I would have the integrity to speak out against it. I believe I would. I hope I do.

When we have so many important things to do in this Congress, we do not have the time to spend 30 hours on our turndown of 4 judges that President Bush has put forward: We have approved 168 judges, turned down 4. That is not the way to operate things.

I am very cooperative most of the time. I apologize if I have caused any inconvenience to any of my friends today, but I want to make sure that the inconvenience caused to some today is something that will help us in the future have a more organized, friendly, cooperative partnership in the Senate. It is going to be hard for the next few days doing that when we are going to spend 30 hours, starting Wednesday at 6 going until midnight on Thursday, talking about how badly—that is wrong—we have treated Miguel Estrada, Justice Owen, Judge Pickering, and General Pryor, people who, I repeat, have well-paying jobs.

Is it important that we devote our time to that? I mean, have a vigil for 3 hours, not 30 hours. There is not going to be anything new said in 30 hours that could not be said in 3 hours. I am interested to see if anything new will be said in the whole 30 hours that has not been said already.

Mr. DURBIN. Will the Senator yield for a question without yielding the floor?

Mr. REID. I yield to my friend from Illinois without losing the floor.

Mr. DURBIN. I would like to ask the Senator from Nevada, through the Chair, as a member of the Senate Judiciary Committee, each of these nominees who has been contested, four nominees who have been contested—it is my understanding 168 of the President's nominees have been approved and four have been held, and as a member of this committee I can say to the Senator from Nevada, in preparation for my question, Miguel Estrada, I might mention there was a lengthy hearing. It may have been two hearings, if I am not mistaken, and a lot of questions asked by individual Senators and then several lengthy debates on the floor of the Senate leading to the cloture votes.

In the case of the nominee, Priscilla Owen, who is a Texas Supreme Court Justice, she was not only given a hearing and considered previously and rejected, she was brought again for another consideration by the committee and more debate on the floor.

When it comes to Attorney General Pryor of Arkansas, I can recall it was a very lengthy hearing in the large hearing room over at the Hart Building, the Senate Judiciary Committee, and then with Judge Pickering, another district court judge from Mississippi, who received two separate hearings, and then after those hearings was rejected, then brought back again, more lengthy debate. So I ask the Senator from Nevada, through the Chair, is it his belief that any of these four nominees have been treated rudely by the committee or denied an opportunity for a hearing or given a chance in the Senate to have had their qualifications considered before the votes were taken?

Mr. REID. I say to my friend from Illinois, through the distinguished Chair, there has never been any suggestion that these nominees were treated like President Clinton's nominees and not given hearings. The answer is, no.

I also say to my friend, assuming for purposes of this debate only, that every one of the decisions we made—that is the Senate Democrats made—with these four nominees, that we were wrong, we should not have done it, is that any reason to take the time of this Senate to spend 30 hours on four nominees? I am only stating this for purposes of this debate, that even if we made four wrong decisions, should we spend 30 hours of our time talking about what is going on? Thirty hours? I just cannot believe that.

Mr. DURBIN. Will the Senator yield for another question, through the Chair, without yielding the time?

Mr. REID. I would do that. Any time I hear someone shuffling around the room, I am always hoping it is people coming to hear more about my book. I am on chapter 6 and I can tell everybody it gets better. This is kind of the buildup. I thought the naming of the town was pretty good. I thought the strike was pretty good.

Mr. DURBIN. If the Senator would yield?

Mr. REID. I would say I thought my dissertation on the rabbits and cactus was okay. In fact, I wish I had known at the time how bad those rabbits were, and I may have talked about them in my book. I am becoming more of a coyote fan all the time, hoping that they win more battles with the rabbits.

Anyway, I would be happy to yield to the Senator from Illinois for a question only, without losing my right to the floor.

Mr. DURBIN. Well, being from Illinois, I cannot get into the rabbit and cactus debate as some of my colleagues, perhaps my colleague from Arizona might be able to, but I ask my colleague from the State of Nevada, through the Chair, the following question: Is it his hope this evening we will lead to a point where there is a vote so that Members will have a chance to vote before the end of the day? Is that the Senator's goal in taking the floor as he has?

Mr. REID. I say to my friend, I personally do not care whether we vote or not. I think it is late. I am not sure we need a vote. I am not sure people are here to vote, but I really do not care. I simply want everyone to know, as I have said on several occasions, that someone who can be maybe not the most cooperative—but I think I am in the top 20 or so of being cooperative around here—I am happy to be cooperative in the future. But I repeat, on more than one occasion I have said today that we cannot be treated this way. We are part of the program here.

We cannot tell people who live in California there is going to be a vote. They ask, well, what time is that vote going to be on Monday?

Well, we don't know.

What is it going to be on?

We don't know, maybe something dealing with the Commerce-State-Justice.

Well, what if an amendment is going to be brought up, is it not going to be debated?

I don't know.

I had a call from somebody who had a schedule in the eastern part of the United States today. He said: Should I come?

I said: I don't know. I am going to try to protect you, but I don't know if I can.

Here we are. To compound things, tomorrow is a national holiday that Senator DASCHLE originally agreed to work and have votes on so we could get out of here.

So I don't know if there is going to be a vote. I don't know. I don't know if there is going to be a vote. I really don't know, but maybe when I finish there will be a decision made on that. Maybe tomorrow we will have a better idea of what the schedule is. I hope that in the scheduling for tomorrow we will have some definition tonight what that scheduling is going to be.

Those people in the West have lost their day. They cannot go West to enter into functions sponsored by veterans on Veterans Day. They cannot do that now. They have been brought back here for various and sundry reasons, none of which they understand. If people had some idea tonight, there are still things on the East Coast that people could still do tomorrow. I am sure maybe the Senator from Illinois, if he knew what the schedule was tomorrow he could return to the Chicago area or other parts of Illinois and do things. But those of us in the West cannot do that. So that is where we are.

Chapter 6, ''The Big Mine,'' M-I-N-E.

If one travels to Searchlight today and drives or walks around the area, he or she will see scores of mines, mine dumps, tailing remnants, gallows frames, and even collapsed mill sites. The names of the mines are entertaining and curious: Empire, Good Hope, Good Enough, New Era, Blossom, Key, Tiger, Barney Riley, Rajah, Yucca, Shoshone, Ironclad, Parallel, Searchlight Mining and Milling (M&M), Western, Berdie, Pan American, Elvira, Mesa, Pompeii, Southern Nevada, Telluride, Empire, Red Bird, Blue Bird, Saturn, Santa Fe, Philadelphia, Eddie, Ora Flame, Carrie Nation, Magnolia, Hyacinth, Poppy, Parrot, Spokane, Cushman, Dubuque, Golden Garter, Silk Stocking, Eclipse, June Bug, Little Bug, Cushman, Duplex, Water Spout, Cyrus Noble, Golden Rod,

Water Wagon, Bellevue, Chief of the Hills, Crown King, Quaker Girl, Iditarod, Greyhound, New York, Stratford, Quintette, Columbia, Gold Legion, Calivada, Annette, Gold Coin, Gold Dyke—these are but a sampling of the myriad claims that make up the Searchlight mining district. A few of the mines were sporadically good producers, especially the Duplex, Blossom, Good Hope, and Good Enough.

Mr. ROBERTS. Will the distinguished Senator yield for a question?

Mr. REID. I will yield for a question not to exceed 1 minute, Mr. President, without my losing my right to the floor.

Mr. ROBERTS. I thank the distinguished Senator. While sitting in my capacity as the acting Presiding Officer, going back to chapter four of your book, I got a little confused as to how the city of Searchlight actually was named Searchlight. I got mixed up between Lloyd Searchlight and the kitchen matches. I was wondering if you, with your intimate knowledge of who is a chef and who is a cook and poor Bill who has died—obviously you don't have any fish fries anymore, but I am interested in the goulash—but with your intimate knowledge of Searchlight, do you have a theory, a pet theory as to how Searchlight actually got its name, of the three hypotheses that you mentioned?

Mr. REID. I actually know how Searchlight got its name, I say to my friend through the distinguished Presiding Officer. Searchlight got its name because someone said, ''I found gold,'' and someone said he would ''need a searchlight to find it.'' I feel fairly certain that was it.

I think, as I said in my book, if I took the naming of Searchlight to a jury I would win, but not every time. We know the Lloyd Searchlight thing is history that, as I said, only deserved one paragraph. I gave it two. But it is not much of a theory.

But the one dealing with the matches is pretty good. I think that is something that a jury once in a while—if we did it 10 times, maybe 2 out of the 10 would find that.

Mr. ROBERTS. If the distinguished Senator would yield one more time—

Mr. REID. Under the same conditions.

Mr. ROBERTS. Those were kitchen matches, not the modern?

Mr. REID. Oh, yes, I say to my friend who remembers those little wooden matches.

Mr. ROBERTS. Yes.

Mr. REID. He remembers those wooden matches. They still have them now but usually they are hard to find and usually they have the real long ones they use for lighting fireplaces.

Yes, the Senator from Kansas, I know, remembers those wood matches. I compliment the Senator from Kansas for being so attentive. You did pick up a lot. You were here for quite a few chapters.

Mr. ROBERTS. Mr. President, if I could just ask one more additional question of the Senator?

Mr. REID. Under the same conditions.

Mr. ROBERTS. Did you ever solve the problem with the rabbits with regard to the cactus they would eat or wouldn't eat? And I was wondering if you thought about just basically desert rocks? They have some beautiful rocks out there and I doubt seriously if the rabbits would have eaten the rocks.

Mr. REID. Mr. President, the cactus is an ongoing saga. The cactus, I am working on that. I am not going to say in front of everybody how much money I have spent on cactus. My wife knows and is not very happy about it. I hope she is not watching because I just spent a few more dollars.

Mr. ROBERTS. Rubber tires, perhaps?

Mr. REID. Oh, no, my home is much nicer than rubber tires. In fact, we do have a magnificent rock. I am glad you mentioned that.

In front of a great Joshua tree, we have a rock that was hauled to my home that is as big as, oh, probably, four of these Senate desks put together. The reason it is so meaningful to me is, in the days as I was a boy growing up, my father and uncles—and people in Searchlight—would engage in single-jacking contests. Single-jacking contests are contests where a man with a piece of hardened steel that has been sharpened very sharp, with a big hammer that you handled with one hand but which had a great big head on it, not like a carpenter's hammer—they would have contests during a 10-minute period of time to see how deep you could dig into that rock.

Now I have that rock, where a number of contests were held, driving these pieces of steel with a single-jack into these rocks. My dad participated in some of these events. As I drive into my home, there is this great big rock and I take people out and show them these holes. I don't know specifically which ones my dad was involved in, but he was a single-jacker in his earlier days.

I am glad you mentioned the rock.

My cousin, who has a master's degree—never used it—started mining from the time he was a few years younger than me. He started mining up at Crescent. I talked about him in the first part of my book because his dad was very into that.

His son, never having worked in mines, decided that was what he was going to do. He spent the last 25 years or so working up there, making very little money until the last few years. He didn't make any money from gold. But a Searchlight contractor came to him and saw this beautiful rock that he dug out. It had no gold in it but it was red and all variations in color. He said: How about selling me some of this? So he entered into a contract.

We build thousands of homes every year in Las Vegas. With water being as scarce as it is, there is a lot of desert landscaping going on in Las Vegas. My cousin has made a lot of money in recent years selling rock.

Mr. ROBERTS. Mr. President, if I could just ask one more question and I will desist.

Mr. REID. Under the same conditions, Mr. President.

Mr. ROBERTS. I thought perhaps with your cousin, again, you could replace those cactus with rocks and I know the rabbits wouldn't eat the rocks. But in any case I think the operative thought would be to simply ''rock on.''

Mr. REID. Mr. President, my friend from Kansas is absolutely right. We probably should rock on.

I know this is not drawing a lot of people and certainly is not going to take away from Monday night football, but I did get a call from my friend who is a Congressman from Nevada by the name of JIM GIBBONS. JIM is somebody who has a distinguished military record. On the first flights that went to Iraq the first time, he was in the first formation of airplanes that went into Iraq through all that flak and other stuff.

He is an American war hero. He is a lawyer and a geologist. He served in the Nevada State Legislature. He is now a long-time Congressman. When he was in the State legislature, he initiated an action that led to the amending of the Nevada State Constitution to require a two-thirds vote on all tax issues.

JIM said: I am from Sparks; say something nice about Sparks. So I will do that.

My first remembrance of Sparks, I say to my friend, Congressman JIM GIBBONS, was when I was a little boy. My hair was not as red as that of one of the pages. She is not here tonight. But she has really red hair. People thought I had red hair, strawberry blonde, or red. It has turned gray.

The first thing I say to Congressman GIBBONS about Sparks is, when I was a little boy, the bus used to stop in Searchlight. A woman got off the bus. I didn't know she had come from Sparks. Sparks is where the mental institution is. I was just standing there, this poor little kid. I must have been about 8 years old. She got off the bus and said: You little SOB, you have been following me. I am tired of it.

I was scared to death. That is my first memory of Sparks. I learned later she had just gotten out of the insane asylum. This woman haunted me for weeks. My parents explained to me that she had come from an insane asylum and she had not gotten it all together.

I say to Congressman GIBBONS from Sparks, we still have the State mental institution. Sparks is a workingman's town. Sparks is connected to Reno. There is no space between the two towns. Sparks was a railroad town. They are working on a better version of a railroad museum that needs to be developed there. The railroad still goes through Sparks. It is still an important part of Sparks. It is a resort area. It is a very nice resort with a hotel and casino. It is a very nice place.

So, Congressman GIBBONS, Sparks is a great place. It is part of what makes Nevada. One of the things that makes Nevada as good as it is is the people who come from Nevada, not the least of whom is Congressman GIBBONS.

I probably should say something about Senator ENSIGN. I will have to say a few things, I guess, about everybody. I don't want to hurt anyone's feelings. Senator ENSIGN and I have comparable backgrounds in many respects. Senator ENSIGN is a long-time Nevadan. He spent most of his time in Nevada as he was growing up in the Lake Tahoe area. I don't remember exactly, but I think about 6th through the 10th grades. He was an athlete there. He still calls Lake Tahoe one of his favorite places in Nevada. Senator ENSIGN, as we all know, served in the House of Representatives. Prior to doing that, he was a veterinarian in Las Vegas. Senator ENSIGN and I hold the distinction of being alternates to the military academy. And we say for those people who want to go to the academy, if they can't make it to one of the academies, maybe they can wind up being a Senator. That is what happened to Senator ENSIGN, and that is what happened to me.

JOHN has a wonderful family. His father and I have been friends for many years. Our congressional delegation is really growing. For many years—from the time we became a State in 1864 until 1982—we only had one Member of Congress. Now we have three House Members and two Senators. My old House seat is now held by Congresswoman SHELLEY BERKLEY.

I see the distinguished senior Senator from Michigan in the Chamber. He knows SHELLEY BERKLEY, a wonderful woman. She is so good at what she does. She has been a member of the State legislature in Nevada. She has been a member of the Board of Regents in Nevada. Now she is in her fourth term as a Member of the U.S. House of Representatives. She is a wonderful woman. She is married to a fine physician who is tremendously supportive of her. She has had some very difficult elections, but not anymore. That is her congressional district which she represents extremely well.

We have a new seat. The seat Congressman GIBBONS holds is a heavily Republican district. The seat Congresswoman BERKLEY holds is a heavily Democratic district. The seat Congressman JON PORTER holds is one of the seats divided between Democrats and Republicans. He served previously as mayor of Boulder City, then as a member of the Nevada State Senate, and was elected in the first term as a Member of the House of Representatives.

I appreciate Congressman GIBBONS. If he or his staff, or both, are watching what we are doing here today, as I said, I talked about Searchlight and Congressman GIBBONS wanted to make sure I said something about Sparks. I am happy to do that. It is a pleasure to work with the people who serve in the Nevada Congressional Delegation. They are wonderful people. I am proud of each one of them.

Mr. LEVIN. Mr. President, I wonder if the Senator will yield for a question without losing his right to the floor.

Mr. REID. I would be happy to. I know that by yielding for a question I don't give up the floor, but I always say ''without giving up my right to the floor'' just to make sure. Because the Chair changes all the time, I want to make sure the Chair understands I don't have to say ''without losing my right to the floor.''

I will be happy to yield for a question of my friend from Michigan as long as the question doesn't exceed 2½ or 3 minutes.

Mr. LEVIN. Mr. President, I tried to catch as much as I possibly could about the Senator's exposition of Searchlight on the monitor in our offices. It is an absolutely fascinating history which he has shared with the Senate.

I point out that the Senator who is doing this tonight is surely one of the most patient, determined, and beloved Members of the Senate. I ask this question of him as somebody who I think in the Senate on both sides of the aisle is admired, as somebody who tries to keep this institution working, and who has accommodated every Member of this Senate over the years, be it Republicans or Democrats.

My question relates to Searchlight. I want to just see if the place I actually went through with my wife on our way to Death Valley, CA, might have been Searchlight. We went through it at night. It was a town in Nevada—a very long town. It was in a valley. It was probably 10 times longer than it was wide. It was one of those nights where all the lights of the town sparkled. I am sure Nevada probably has some of the clearest air in the world. I wonder whether or not that is the shape of Searchlight. Is it a very long, rectangular town?

Mr. REID. Mr. President, if I could say to my friend, my friend went through Pahrump, not Searchlight. That was Pahrump. Searchlight is very short. You are through Searchlight in less than a mile on the highway.

Pahrump is a town that is, by the way, now more than 40,000 people, unincorporated. It is a town that was blessed with large amounts of water. Pahrump is some Indian term dealing with water. It has lots of water. They actually grew cotton in large quantities in Pahrump for many decades. It is very water intense.

With the growth of Las Vegas, Pahrump has become almost a bedroom community for Las Vegas. It is one of gateways to Death Valley. It is a place just as the distinguished Senator described, a long, narrow town that goes on for miles. As I said, it is growing significantly and is part of Nye County, which is the second largest county in America, second only to San Bernardino County.

Let me say to my friend, I want the distinguished Senator from Michigan to know what a solace it is to me the Senator from Michigan is the leading Democrat, the number one Democrat, the ranking member on the Armed Services Committee. There are a lot of different personalities and character traits we all have in the Senate. The Senator from Michigan has a couple, all positive. One is, nothing gets by the Senator from Michigan. There is not a sentence in the bill the Senator is involved in that he does not understand. There is not any agreement they enter into that the Senator is a part of that he does not understand. When we deal with the defense and security of this Nation, it does my heart good to know the Senator from Michigan is involved in helping make our country safe and secure.

I appreciate his kind comments. In an effort to indicate to the Senate my fondness for the Senator from Michigan, the first time I met the senior Senator from Michigan, I was a member of the House of Representatives. We met. I proudly said to the Senator from Michigan, I came to Washington with your brother, Sandy Levin. I said how much I cared about him. The Senator from Michigan said it very quickly: My brother Sandy is not only my brother; he is my friend.

Having three brothers, that meant so much to me. I have always looked at the Senator from Michigan in the context of what he told me about his brother Sandy.

I also say to my friend from Michigan, I had other things to do today than be here and do what I am doing today. We are talking about Searchlight now. But for 3 hours I had to be aware of the Pastore rule and talk about the bill. I talked about that for approximately 3 more hours, about substantive issues. I tried to lay the groundwork in this body to show that we, as the Senate, should be concerned about a number of things.

We should be concerned, as in this chart, about the things that are going up. Uninsured medical, going up. This is during the Bush term of office, almost 3 years now. The number of poor is going up. The unemployed numbers are going way up. The budget deficit, the largest ever in this country; the national debt, going way up. I thought it would be better that we as the Senate talk about the issues that are going up rather than spending 30 hours on something going down, the lowest rate of Federal vacancies in the Judiciary in almost 15 years.

The Senator understands procedures of this body as well as I do. The Senator understands the Senate was developed by our Founding Fathers not to protect the majority; it was developed to protect the minority. The minority has trouble protecting itself and the majority never does. It was developed for more than protecting the Senate minority, but it was set up to protect the minority so that in pieces of legislation where people had no advocacy

and only the moneyed interests were pushing through, the minority could do something about it.

One area of responsibility we have as Senators is to protect what goes on in the Senate. The distinguished majority whip came to the floor the first thing this morning and said, I think it is unfair we have been criticized for poor leadership—we, the Republicans. We have done great things. We passed 10 appropriations bills; you only passed three. We have done lots of good things.

What he failed to say—and anyone who knows anything about the Senate knows you cannot do things on a one-party basis here. They passed 10 appropriations bills because we let them, because we thought it was good for this country.

When we were in the majority, they would not let us pass them, as we all remember. But this, as I said before, is not payback time. This is time to be responsible.

We were on the path to pass all 13 appropriations bills. I talked to Senator STEVENS on several occasions about ways to help him. The Presiding Officer knows we could have passed the Agriculture bill in less than 1 day. Why didn't we? Because as we are working hard, agreeing to work today, November 10th and on a holiday, November 11th, there is a program being conducted to keep us in session from Wednesday at 6 until Thursday at midnight. To do what? To talk about unemployment? To talk about unemployment benefits? To talk about minimum wage? To talk about health care? To talk about the environment? To talk about all the important issues we have to deal with? No, we are going to talk about Federal judges for 30 hours. Can you imagine that? Thirty hours to talk about Federal judges.

What have we done that is such a bad job with judges? As I said to the Senator from Illinois a little while ago, I say to my friend, assume the four judges we turned down—Estrada, Owen, Pickering, and Prior—assume we were wrong. Just for purposes of argument, we were wrong, we made a bad decision on every one of them. Is that any reason to hold up the Senate, and the country, for 30 hours? But the fact is, we were not wrong. The fact is, we did the right thing for this country to keep out a man by the name of Pickering, who every civil rights group in America opposed. Every one. Every one. I am saying we did the right thing by keeping Miguel Estrada from going onto the bench. Why? Because he thought he was somebody who did not have to answer questions like everyone else. He thought because he was so smart and graduated first in his class that his intellectual abilities before the dumb Democrats on the Judiciary Committee—he didn't have to deal with those people. He could just waltz through. He didn't have to tell people how he felt. He showed more of his arrogance when he said, I don't have to give you the memorandum I wrote while I was in the Solicitor's Office. We did the country a favor by turning him down.

We have done the country a favor by turning down Justice Owen, a Texas Supreme Court Justice who even the President's lawyer doesn't want to be on the court. That is what he said in some of his opinions—he dissented, she didn't—in Texas.

William Pryor—give me a break. We did the country another favor.

So we are going to spend 30 hours of this Senate's valuable time talking about 4 judges who were turned down. How many have we approved? One hundred sixty-eight. How many more on the calendar will we approve? I don't know, but we just have to arrange votes for them. I said to Members of the Judiciary Committee who came here today, I don't like a lot of the 168 we voted on and approved, but I believe the President should have wide latitude in picking these judges. We have given him wide latitude. We have only sifted out the very worst.

Mr. LEVIN. Will the Senator yield for a question without losing your right to the floor.

Mr. REID. I would be happy to do that for my friend from Michigan.

Mr. LEVIN. Are there not two other factors involved here: One, that in all four cases there has been significant debate on each of those four judges before the votes that were cast, the cloture votes which were cast? As a matter of fact, there is a suggestion there may be additional cloture votes for which debates would be totally appropriate. If the majority is going to bring up additional cloture votes on any of those judges, there would be debate before cloture on those judges. But what the 30-hour proposal is, is something which does not lead to votes.

Is the Senator from Michigan correct, there are no votes at the end of the 30-hour use of the Senate's time?

(Mr. BENNETT assumed the Chair.)

Mr. REID. The Senator from Michigan is absolutely correct. I say to the Senator from Michigan, until Friday, all the time was going to be taken by the majority. After public statements crying for fairness, in the unanimous consent agreement here Friday they said we can take half the time.

Mr. President, I say to my friend from Michigan, of course they have had hearings. Some of these people we voted on numerous times, and every time we vote on them it is the same argument. I can give the arguments. I have listened to them so many times on the other side. We are going to spend 30 hours. Is there going to be a single new thing brought up other than to berate us for destroying the system?

I repeat, Mr. President, on my blackberry here today I got something from the majority leader. Let me see if I can pull down to it here. I have been getting a lot of messages I have not returned today. Let's see what I can find. It is here on my blackberry. Here it is. Here is what it says: ''What we are doing to move our judicial nominations forward.'' That is the title of the deal here: Judges.

This year the Senate has suffered an unprecedented obstruction of a President's judicial nominees by filibuster. In the history of our Nation this has never been done before.

Of course it has been done before. It has been done while I have been here. I have not been here that long. It has been done just the last few years. I do not have it here—yes, I do. Lisa has it up here. We know that right here we have many judges who never even got a hearing, but for Barkett, Paez, Berzon, we had to file a petition to invoke cloture, and cloture was invoked before we got to vote on these.

Now, on these, remember, you need 41 votes to stop a cloture. They almost got it with Paez. For Berzon they got 34 votes; Barkett, 37 votes.

Mr. LEVIN. Will the Senator yield?

Mr. REID. So I say to my friend, what makes it even worse than these people is what happened to my friend from Michigan. For my friend from Michigan, they would not even give his people hearings. They ignored him. They are gone.

So I say to my friend from Michigan, we have been fair. We have been fair in the treatment of judges. We have done what we feel is fair, 168. One hundred sixty eight, let's understand that. This is not anything that is too hard to understand. I know I am being somewhat facetious here: 168 to 4—168 to 4—168 judges approved during the less than 3 years this man has been President. We have turned down 4—1, 2, 3, 4. That is how many we have turned down.

Now, does that deserve something? Does that deserve 30 hours in the last few days, the waning hours of this Congress? I do not think so. I do not think so.

Now, we have said many times this is not payback time. And that is established by this 168 to 4. Look at what happened—look at what happened—during the Clinton years. Nominees blocked: 63. Percent blocked: 20 percent. Bush: 2 percent.

Now, as I said here earlier today, if we only blocked 2, and it dropped to 1 percent, do you think 15 hours is what they deserve for talking about judges—15 hours, I say to my friend?

Well, I think we have treated them fairly. I do not know how many of these 63 people who were treated poorly were from the State of Michigan, but I know of a couple because I have had conversations with my friend from Michigan. I so appreciate the Senator bringing this to the attention of the Senate through the questions that he has asked.

That is why we are here. As I said earlier, I have other things to do. We all do. But I am here today not as HARRY REID, a Senator from Nevada. I am here today as HARRY REID, the person representing the Democrats who feel it is unfair that we are going to spend 30 hours, beginning at 6 o'clock

on Wednesday, going until midnight on Thursday, when we have such important things to do, and when we have bent over backward to make this new majority leader's life a pleasant life. We have been so easy on him because we believe that is our function.

Mr. LEVIN. Will the Senator yield for an additional question?

Mr. REID. I will yield for a question without losing the floor.

Mr. LEVIN. Without losing your right to the floor.

I wonder if your staff could put that other chart on with the judges because I just want to expand on one or two points. Some of the judges which the good Senator from Nevada pointed out were judges where cloture votes were required by the opponents of the judges; is that not correct, during the Clinton years, and it was required there be 60 votes in order to get those cloture motions adopted?

Mr. REID. Yes. We have here Rosemary Barkett, Eleventh Circuit, where a cloture motion had to be filed.

Mr. LEVIN. Now, does that not mean, for people who might be watching this, that it was required that the supporters of that judge produce 60 votes?

Mr. REID. I say to my friend, that is absolutely right. Barkett, Paez, and Berzon all required 60 votes—60 votes. Without 60 votes, these people could not serve. And so for someone to have the audacity to say: By filibuster, the first time it has been done in the history of our Nation; it has never been done before—it has been done not only here but other times. Other times it has happened.

Now, I say to my friend, there have been other occasions where the filibuster was conducted, and it was obvious to the nominee that person was not going to be able to break the impasse, so to speak, and they quit. We know that Abe Fortas, who wanted to become the Chief Justice of the Supreme Court, he withdrew when he saw he could not get enough votes to break the filibuster. So that is simply the fact. That is a fact of life.

So, please, I say to my friend, the majority leader, or anyone else, do not say it has never happened before. We have done it four times this year to protect our role. As the Senator from Illinois, Mr. DURBIN, pointed out earlier today, our role, which article II, section 2 of the Constitution of the United States states, is that we advise and consent to the President of the United States. We believe that is our role as it relates to those Federal judges.

These are lifetime appointments. These are very important positions. They are prestigious. They are important. These judges have the ability of life and death through the stroke of a pen—life and death of an individual, of a company, a course of action, a labor union, a business.

So I think what we have done is appropriate. Would it be better for us to not have the advise and consent role—just say: President Bush, send them all up. We will take them all. In fact, we will vote on 20 at a time. Just bring them up. We will vote on them 20 at a time. We have nothing to say about it, so just put them on through.

Now the majority is going to come and say: Well, yes, but let's give them up-or-down votes. What they are saying is: We do not want to play by our rules. We want to play by somebody else's rules.

They demanded filibusters, and we were able to break those. Thank goodness there were some people on the other side who recognized this was not right. But do not say we have never had filibusters. We have had them.

I heard my friend, the distinguished Senator from Utah, the senior Senator, say: Yes, but those were friendly filibusters. Come on. What is a ''friendly filibuster''? I do not understand what that means. Even if that were not the case, there have been filibusters in the past.

So I say to the Senator from Michigan, I appreciate him being here tonight and talking about some of these issues with us. It is important that we understand that the reason the majority has been able to do as well as they have with the legislation this year is because we have worked with them.

I have no regrets about that. I think what we have done has been good. But I also say to the very experienced senior Senator from Michigan, the Senate is not a place where you can just run over people. The majority leader has a title, but it is not dictator. It is not: You do whatever I say.

The only way he is going to continue to be successful is if we work with him. And we will continue to do that. But we are not going to be stampeded.

When is the vote?

Oh, I don't know. Sometime on Monday.

Early or late?

Well, no, I haven't decided yet.

We have people living on the west coast who went home this weekend for various reasons. They have to live by a rule like that when tomorrow is a national legal holiday?

Mr. LEVIN. I wonder if the Senator will yield for an additional question without losing his right to the floor.

Mr. REID. I will do that.

Mr. LEVIN. The Senator from Nevada, probably more than anybody, has made it possible for this Senate to run as smoothly as it does, even though there are huge numbers of bumps in the road. There would be 100 times as many bumps in the road but for the willingness of the Senator from Nevada to work with Members on both sides of the aisle to get legislation passed. He is constantly here in the well of the Senate asking people if they could cut the time down on their amendments, could they drop amendments, could they work cooperatively with somebody to work jointly on a bill. It is a constant effort to keep the wheels greased so we can accomplish as much as we do.

I ask the Senator from Nevada this question: As somebody who is known to every Member of this Senate as someone who makes it possible for us to get a whole lot of things done, which we could not get done but for that effort, is part of the cooperation which makes it possible for us to act cooperatively, to act with a sense of comity, which we do most of the time, is it not true that part of that is that there be a willingness to share scheduling information with the minority so the minority can schedule airplanes, come back when there are going to be votes, and that that is an essential part of a spirit of cooperation which is so essential to be President of the Senate, and whether that is something which the Senator is referring to when he talks about an unwillingness to give information about whether there would be votes and on what subjects today and tomorrow?

Mr. REID. I say to my friend, Senator DASCHLE agreed that we would work today and tomorrow, when all of a sudden we learned toward the middle of last week that the schedule this week was going to be interrupted by 30 hours talking about four judges. We were dumbfounded. We thought the report we first got had been mistaken, that they had made it up. But we came to the realization that it is true. The majority leader made a deal with somebody that they could spend 30 hours talking about these four judges. So then we agreed to go to Agriculture, which we figured we would do that. We could have finished that more quickly than we did, but some of the Members were pretty upset. They were going to have to work Monday and Tuesday, when they had lots of things to do at home.

Then when it came time for the schedule today and tomorrow, it is so vague. It is obvious they are doing things to protect people over here and not telling us who they are protecting and why.

This isn't some big cabal to take over the Senate, but it is a cabal of one to make sure people understand around here that if the Senate is going to be productive, it takes both Democrats and Republicans to be productive.

We have set an exemplary record, as the history books will recount, of being very productive this year. We have allowed the production to go forward because we thought it was in the best interest of the country.

Mr. LEVIN. If the Senator will yield for one additional question.

Mr. REID. I yield without losing the floor.

Mr. LEVIN. Is the likelihood that we will be able to finish all the appropriations bills reduced when we spend 30 hours on some other subject which, again, does not lead to a vote on those judges, but nonetheless is it less likely that we will be able to finish all the appropriations bills as a result of allocating that time to that debate and, as a result, if we do not finish the appropriations bills individually, does this

mean it is more likely that we are going to end up with some kind of an omnibus appropriations bill which bollixes together three or four appropriations bills which should be and usually are treated separately, amended separately, debated separately in the light of day?

Mr. REID. I say to my friend, it is obvious. Think of that schedule, 30 hours beginning at 6 o'clock Wednesday going all night, all night until midnight the next night. Is that going to bring about a fatigue factor here? Of course, it will. People have to be here. All the staff has to be here working hard. Of course, it is going to slow things down. But not only slow down appropriations bills and conference reports, we have things here we should be doing.

I asked last week on several occasions, why can't we pass The Military Construction appropriations bill by voice vote? Well, it is obvious why not. They want to arrange it so that it is brought up here and a time for debate on it, just for lack of a better way to describe it, just to jerk us around. Why aren't we doing the Syria Accountability Act? I don't know. There is an hour and a half time set on that.

I am confident the reason they didn't do it is because they have some people who weren't here today. We don't know that, but that is why they didn't vote on it today. We know that. They are protecting certain people. None of us were protected because we weren't part of the schedule.

I would hope that we would do a better job of working together on a schedule. The Senator is right. We have worked together on trying to work out amendments so there wouldn't be as many amendments and we would have shorter time on the amendments. That is the only reason these bills got passed, not only the appropriations bills but a long string of bills that my friend from Kentucky this morning talked about, things that they have accomplished.

They haven't accomplished them. We have accomplished them. No one, no Republican or Democrat in the Senate can do it alone. This is a body where it takes, virtually for everything, unanimous consent. We all have to work on it.

I would certainly hope that we would do a better job working together in the future and not try to do all this freelancing. I thank the Senator for his participation.

Mr. President, I began a long chapter here. I am going to proceed with the town that my friend from Michigan almost came to but not quite. I spotted it in a second. He described it perfectly. We all know what Pahrump is like. It is just as it was described by the Senator from Michigan. There are wonderful people in Pahrump. I worked with him on a lot of different projects, not the least of which is a nice two-lane road which was killing so many people. The two-lane road is now a four-lane road.

One of my good friends, who was a prominent person in Pahrump, he and I served in the legislature together. He is a Republican. I am a Democrat. Tim Hafen is a fine man who has worked so hard to develop that town. He owns a lot of property. It has developed a lot. My brother lives in Nye County, Amargosa Valley.

There are a number of things going on there, not the least of which is a huge dairy farm, 15,000 cows, something like that. There are lots of them.

On we go with the big mine, chapter 6. I know there has been a lot of disappointment in that we weren't dealing with chapter 6 earlier. I got off the script dealing with rabbits.

I would just say this: I had always wanted so hard to find a picture of a coyote. They are such wiley animals, not seen very often.

So I was in Winnemucca. Someone was a sculptor there and they had this Western display in Winnemucca, NV. I said: Have you ever known anybody to sculpt a coyote? He said: No. I said: Would you do one for me? He said: Yes.

I have it in my office upstairs. He did a wonderful job. At the time I did that, I didn't realize I was pulling so hard for the coyotes and against the rabbits. Since I built my place in Searchlight, I have become even a bigger fan of coyotes than I was before.

It was, however, with anticipation and great hope that the early Searchlighters approached the future. In May 1904 the headline in the local newspaper blared that the area was the premier desert mining district. The first years of the boom created much speculation and investment. By 1904 there were seven mills within a mile of one another: Cyrus Noble, Quartette, Duplex, Southern Nevada, Good Hope, M&M, and Santa Fe. Unfortunately, soon after construction, several of the mills were left without any ore to process.

The Cyrus Noble earned its name because the claim was sold for a bottle of Cyrus Noble whiskey. Ten days before the assessment work on the claim was due, the owner walked into a Searchlight bar and shouted, ''What am I offered for my claim?'' ''I'll give a cigar,'' one patron said. The offer was accepted. Immediately afterward, the new owner crowed, ''What am I offered for my claim? Another miner responded, ''I'll give you this bottle of Cyrus Noble.'' ''Sold,'' replied the new owner. The third owner made a good bargain because, unlike many others, this claim did produce some gold. Adjacent to the Cyrus Noble were other claims with names that related to the bottle, such as the Little Brown Jug.

I might say, Mr. President, that the Cyrus Noble, a whiskey company, produced a collection; they are collector's items now—the bottles of whiskey called Cyrus Noble. They are beautiful. I have most of them in my house in Searchlight. They are of a prospector, a man playing a piano, an assayer, and lots of different things. I think I have 11 of them. There may be more than that. Cyrus Noble is a famous little mine, by Searchlight standards.

The Duplex was the second-best mine in Searchlight, but it was a very distant second place. Another good mine was the Blossom, which was staked by George Butts. It produced a small amount of high-grade ore, but Butts didn't have the money to work it. While trying to sell the mine, he lived on the property in abject poverty in a hut built of Joshua trees. For more than a year he lived in these harsh conditions, holding out for his price. George Butts was given many offers for the claim, but he held out for $25,000, a huge price in that day. After almost two years had gone by, he got his $25,000. He died three days after the sale.

Speculation was not limited to minerals. In December 1907 news reached Searchlight that oil had been struck midway between the town and Needles. According to the story, the Wayne Oil Company was confident that a large oil deposit lay beneath the surface. Like many other strike rumors, this one also went bust. The story was never mentioned again, but the anticipation must have been intense.

The only real world-class mine in the history of Searchlight was the Quartette. From 1899, when Macready disobeyed the order to stop further work in the Quartette, this mine became Searchlight's biggest and best. For the first decade of Searchlight's existence, the Quartette was the premier mine. Anyone writing or talking about the camp lifted up the mighty Quartette as a beacon of Searchlight's progress. Even after mining had all but disappeared in the area, it was still a fine mine, continuing to produce small amounts of gold up until the 1960s. it was the best in Searchlight.

During the decade of mining dominance, from 1899 to 1908, not only was the Quartette the biggest producer in the whole of southern Nevada, but several times it was also the largest producer in Nevada and one of the biggest in the entire United States.

From its inauspicious beginning, the Quartette developed into a mine with multiple shafts. The main shaft, or the glory hole, was sunk to a depth of 1,350 feet. As with many mines of the day, an air shaft was usually sunk to help with the circulation of air in the main shaft, its drifts, crosscuts, and other diggings. The Quartette was no different; it used an air shaft that initially started at the 600-foot level and then was raised to the surface. Eventually the shaft was extended down to the 900-foot level when bad air necessitated that fresh air be circulated to the lower levels. Other shafts sunk over the years were distinguished by the names the Carlton, the Crocker, and Shaft #3. These were not cut to great depths, and most were used for ore exploration purposes.

W.J. Sinclair, one of the first dozen men to enter Tonopah and one of the wealthiest men of Nevada, stated in 1904: ''I doff my hat to Searchlight, for you certainly have in the Quartette, the biggest gold mine in the country. I have seen many wonderful showings, but never the equal of the Quartette.''

Mr. President, I have an illustration in my book that shows the hundreds and hundreds of mining claims in Searchlight history. It was a very big dig for a decade or more.

The Searchlight newspaper opined shortly thereafter: ''Searchlight is justly proud of the Quartette mine for it is, as it stands today, the biggest and best mine in the Southwest. As a free milling proposition it is unequalled by any mine in the United States, and considering the amount of development done it is one of the largest in the world.''

There was a strong basis for this optimism. In November 1903 the mine was working three full shifts, and the mill would begin working three shifts by early 1905. Modern equipment was installed that allowed electric arc lights to shine in the night desert

sky, pointing out the location of the famous hole in the ground. The electric lights on the surface were duplicated in the underground workings as well. In 1904 the Quartette milling operations were electrified. There were telephones on the surface and in certain stations underground. At no time, however, did the Quartette Company share its electrical power generation capabilities with the town. Searchlight would later have to develop its own system of electricity.

After the cessation of mining activities in the mine, there was still much talk of the width and depth of the Quartette ore vein; it was indeed the stuff of which legends are made. At the 700-foot level the ore body was described as being more than 14 feet high and averaging $100 per ton, a figure representing more than four ounces per ton. By today's standard this gold would be worth more than $1,500 per ton. Currently, gold ore in Nevada is mined at significantly less than four ounces per ton; many times are worked when the ore grade has only one tenth of an ounce per ton and sometimes even less. At just one station at the 700-foot level, the stope (a steplike excavation underground for the removal of ore that is formed as the ore is mined in successive layers) was described as being 18 feet by 40 feet and needing 18,000 square feet of timbers for just that one station. By 1906, when the mine had reached the 900-foot level, the vein was measured to be 60 feet wide. In addition to these huge bodies of moderately good ore, another strike occurred on the 700-foot level, which assayed an astounding forty-four ounces per ton; by today's standard, the ore would be worth more than $17,750 per ton. The huge stopes dug out to retrieve the ore were basically underground caverns supported by timbers or by pillars of dirt not removed during excavation, even though valuable, but left to provide support to keep the ground from collapsing.

The early mining in the Quartette, and in all of the mines in Searchlight, was performed by hand. Two methods of drilling were used. The first was single jacking: one man with a large hammer simultaneously hit and turned a sharpened piece of steel. The other method was double jacking: one man held a large, long-handled hammer or mallet with both hands, striking a piece of steel that was held and turned by another man. After the holes were drilled, dynamite was packed into the cavities; a cap attached to a fuse was lit, causing the cap to explode and ignite the dynamite charge. This same method was used in shafts and for tunneling work.

Occupational safety was almost an afterthought. Miners didn't wear hard hats in Searchlight until World War II. They wore cloth hats with a mount on the front upon which to hook their carbide lanterns. Carbide is a binary compound that produces an ignitable gas when combined with water, thus allowing miners to see underground.

After Hopkins purchased the Quartette, the work gradually became mechanized. Gasoline combustion engines were used to power hoists for removing muck and ore from the shafts. Hand power was used to tram the material to the shaft from the various tunnels—drifts, crosscuts, winces, and raises. This waste and ore was placed in cars and trams that ran on iron tracks laid like a miniature railroad. At the shaft, the bucket or tram was put on skids and hoisted to the top.

In the smaller mines, the ore and waste products were brought to the surface by various means, the cheapest being a windlass. A windlass was normally a rounded wooden shaft with a crank on one side end, which had the rope or cable wound around it. When the crank was turned, the rope or cable wound around the shaft, bringing the materials to the surface. Other more elaborate hoisting methods used horses or mules to turn the crank and bring the earth up to the surface.

Even the quarters for the mine bosses at the Quartette were impressive. In 1905 new quarters constructed for the superintendent and other supervisory personnel included lounging and reading rooms. Colonel Hopkins had a complete private suite, even though he spent most of his time outside the district, in either Los Angeles or Boston.

It was reported in 1905 that even more modern provisions would come to the depths of the mine, in the form of new drilling equipment. A new compressor on the surface would supply a new drilling apparatus for drilling uppers, making it easier to place drill holes on the upper reaches of the adit. This method replaced the single and double jacking for much of the work in the Quartette. About the same time, a small timber mill was installed, including a tip saw, swing, cut-off, and wedge saw for the preparation of the mine timbers.

When the main shaft reached the 800-foot level, the modern hoisting equipment allowed the skip, which held three thousand pounds of ore or waste, to go to the bottom and back to the top in three minutes. The hoist was operated by a 60-horsepower Fairbanks-Morse engine, at the time the largest made in the world. Despite all the expenditures for supplies and equipment, it was determined in the summer of 1905 that it cost only $5 per ton to mine and process the Quartette's ore.

Throughout its entire period of operation, the Quartette required timbers in large quantities for square-set timbering. The square-set process was invented by Philip Deidesheimer, who was brought to Virginia City during the Comstock era to solve the extremely dangerous problem of cave-ins, which frequently caused injury and death. He developed the system in just two weeks. His plan was to frame timbers together in rectangular sets, each set being composed of a square based, placed horizontally, formed of four timbers, sills, and crosspieces from four to six feet long, surmounted at the corners by four posts from six to seven feet high, and capped by a framework similar to the base. The cap pieces forming the tip of any set simultaneously functioned as the sills or base of the next set above. These sets could readily be extended to any required height and could be spread over any given area, forming a series of horizontal floors, built up from the bottom sets like the successive stories of a house. The spaces between the timbers were filled with waste rock, forming a solid cube, whenever the maximum degree of firmness was desired.

Not only did this method of timbering provide strength, but it also allowed the timbers to move with shifts in the ground. The slight shifting of the ground would twist normal braces of timbers loose, but with Deidesheimer's square-set method, the bracing remained firm. In Searchlight much of the ground required the square-set method, and experienced timberers were always at a premium.

The Quartette constantly had trouble finding a sufficient supply of wood for its timbering. In September 1905 it was reported that it became so difficult to get the timber from Southern California suppliers that the company ordered 500,000 feet of the product from the Northwest. It was a time when huge amounts of timbers were needed because the shaft was reaching the 1,000-foot level.

In addition to the timbering method of shoring up the loose and dangerous ground, many of the stopes were buttressed by leaving pillars of ore to hold the ground from caving in. In the later leasing years, even though the procedure was dangerous, the pillars of ore would be taken, leaving the ground without support.

The Quartette used timbering only as a last resort. This is clear from early statements made by Colonel Hopkins, who, when asked in 1906 if the company could take more ore than it was currently processing, replied, ''It is not because we have not the desire to take out as much metal as possible in a given time, but simply because we are compelled to protect our mine from the possibility of collapse owing to the character of the walls. With an increased output it would be for us necessary to do much costly timbering to keep the mine from caving in that it would not be worthwhile, whereas at present we are safe from disaster and are doing very well indeed with our investment. In the course of time we will reach a stage we can work upward and then will be asked to mine on a larger scale.''

By June 1905 the Quartette had already produced more than $800,000.

(Ms. MURKOWSKI assumed the chair.)

Mr. REID. Madam President, that was a huge amount of money in 1905.

Before the end of the same year, the mine would have produced more than $1 million, a huge sum of money for just after the turn of the century. In August 1905, 325 men were employed in the mines in Searchlight, this figure did not include the many supporting workers such as teamsters, millers, and the businesses that supported the town and the mine workers. Seventy-five of these men were employed in assessment work and by contract—that is, they were not employed for wages as other miners were. By far the largest employer in the county was the Quartette Company.

As late as 1908 there were those who wrote that because gold was still present at depths of nearly 1,000 feet, the mine would have a virtually inexhaustible supply of good ore.

About the same time that the Quartette's river mill began operating with ore supplied by the company's own railroad, water was hit at the mine. In fact, one of the interesting phenomena in the Searchlight area was that some of the mines hit water at relatively shallow depths. The Santa Fe, located about a mile and a half from the Quartette, found water at less than a hundred feet. The Quartette didn't hit water until about the 500-foot level. The local newspaper reported: ''It is supposed to be the scarcest article in the desert, but mine after mine here is developing water in unheard of quantities.'' Even though the water came at relatively deeper levels in Searchlight, when water was reached, it appeared in large quantities. At the beginning of 1908, the Quartette was pumping 200,000 gallons a day out of the mine.

The dewatering of the mine allowed the company to build a mill closer to the mine site. By October 1906 the twenty-stamp mill was crushing 2,000 tons monthly. Like the rest of its operation, the mills of the Quartette were state-of-the art facilities. By the end of the year the company had added another full twenty-stamp mills and was then milling more than 4,000 tons each month. These mill were used well into the 1920s before they were replaced by ball mills, which were much more efficient and less costly, requiring significantly less maintenance.

By the summer of 1909 the 1,200-foot level had been reached in the main shaft. In August ore of a very high value was found in one of the drifts at the 1,100-foot level. At the same time a new ore body was announced at sites between 400 feet and 500 feet down in the workings.

The bowels of this magnificent mine were extraordinary. Even as early as 1906, the description of the mine was inspirational: ''It would take several hours to make even a hurried trip through the several miles of underground workings. The mystical maze of drifts, slopes, upraises, crosscuts and winces confuses one . . . and the visitor simply loses what mental balance he has left and becomes simply a human exclamation point and ejaculates an endless strings of Oh's and Ah's.''

From the main shaft extended various drifts, nearly horizontal mine passageways driven on or parallel to the course of the vein. On the 200-foot level the drift west was driven more than 1,000 feet.

Madam President, I have a couple pages more, and then I understand we will have the closing script, and I will take a look at it.

It is difficult to imagine the danger and hardship of working in these huge caverns. The only preserved account of the adversity came in 1934, from someone who had been in the Quartette in 1912: ''The temperature was at 105 degrees, at the 1,200 and 1,300 foot levels, with the ground being very soft. The working conditions on the east face of the 1,200 and 1,300 foot levels were almost impossible even though the ore was still good. The work at almost all levels was most difficult because the stoping had been done improperly.''

This letter was written many years later, when Charles Jonas, formerly the superintendent for Hopkins and a subsequent lessee, was attempting to get financing for the mine. He had firsthand knowledge of the operation because he had been involved in the mine since at least 1912. Jonas observed that ore was removed in such a manner that no others would later be able to work the mine in the area where the stoping had occurred. Not only was the ground bad and the underground working hot, but miners were also constantly fighting the never-ending encroachment of water. As late as the 1940s, residents of Searchlight could still feel and hear the Quartette's big stopes caving.

In 1909 the Great Quartette Mine was still producing $500,000 a year, but even as early as 1908, there were rumors that the mine was beginning to fail, and the owners were reported to be negotiating a sale to an English syndicate for $4 million.

The demise of the Quartette began when Colonel Hopkins decided he wanted to turn the management over to others. In January 1910 Hopkins's son, Walter, became the assistant mine manager. Immediately afterward came the first mention of leasing out operations, even though the reports showed that the mine was doing well. But in June, thirty-five of the forty stamps in the mill were silenced.

By the end of 1911 the Quartette was being leased to many different individuals, much like sharecropping in the South. Different areas of the old mine would be mined by lessees, and the Quartette Company would receive a royalty or percentage of the ore taken out by the lessees.

From a review of the mining statistics for the year ending December 1909, the figure for Clark County, almost 12,000 tons, basically referred to mining in Searchlight—no significant mining activity had gone on elsewhere in the county during the preceding decade. For the same period in 1910, the tonnage dropped to 2,400 tons. The main obstacle to further success was the extremely high cost of taking ore from such deep areas of the mine. It is clear that the leasing emerged for primarily economic reasons.

By July nine lessees were operating above the 100-foot level in the Quartette. It was said that the mine was a leaser's mecca because the lessees had some good luck reworking the tailings. Most of the work was at the upper levels of the mine, with some miners sinking new shallow shafts. By the end of 1922 a significant amount of work was being conducted near the surface of the old glory hole, the shaft Macready had opened to start the Quartette. In January and February lessees hit ore at 20 feet, 40 feet, and 1,350 feet.

Most of the mining camps in Nevada experienced much the same evolution as Searchlight, with leasing following the initial production. Tonopah, however, was unusual in that the leasing came first. Within a year of the initial discovery of gold in Tonopah, Jim Butler, the discoverer, had granted more than a hundred leases on his property. He received a 25 percent royalty on the production of the ore. In Searchlight the formation of the large mining companies came shortly after the discovery of the valuable minerals. In Tonopah the large companies came after the leasing era.

Some believed that the labor unrest of 1903 encouraged miners to secrete certain valuable ore deposits during and shortly after the strike. This information was a good basis for the mystic mind of the miner who envisioned hidden treasures of gold deposits. In the report to investors in 1934, Jonas would write, ''The prior leasing operations success depended upon the secret knowledge held by certain people who had secured this information from the unscrupulous group who operated the mine prior to 1905.''

Leasing of any consequence at this great mine was basically concluded by 1917. The success of the lessees is not fully known. Though some miners did quite well, most made insignificant profits. Montgomery-Jones earned $40,000; Post, $20,000; Holmes-Jones, $80,000; Hockbee, $15,000; Pemberton, $5,000; Hudgens, $40,000; and McCormick, $40,000. The discovery of new ore deposits was negligible, with most of the value coming from the recovery of ore left by the Quartette Company for safety reasons. The lessees would simply remove the dirt pillars, causing further degradation of the mine. Several had good luck near the surface, such as John Hudgens, who worked the surface east of the air shaft. He removed $40,000 of ore from the Quartette by going after some ore left behind by the Hopkins group. But years later, in 1931, his son and grandson obtained another lease on the Quartette. They took out about 60 tons that assayed at $50 per ton. This was a good find considering it came from an area no larger than twenty feet by fifteen feet. McCormick removed his value on the 600-foot level at a point of a drift 400 feet from the main shaft. This block of ore was deliberately hidden by the crooked management of the 1903 era and ran more than $200 per ton.

The mine that made Searchlight would continue to be excavated for many years to come, but the glory hole was rendered unusable, as were most all of the areas in the Quartette that had been worked before 1917. The mine, with its large caverns, was too dangerous even for the most courageous and, at times, foolhardy miners. Most of the work in the future would be promotional at best; never again would the magnificent mine produce ore of any consequence. But neither did any of the other mines in the district.

Mr. President, that is the end of chapter 6. I see here a closing script. Let us see what is going to happen tomorrow, if I may just glance over this. I understand the leader is on his way.

I think this is an excellent schedule for tomorrow.

Mr. LEAHY. Will the Senator yield for a question?

Mr. REID. I would be happy to yield to my friend from Vermont for a question only, without losing my right to the floor.

Mr. LEAHY. Madam President, as always, I am impressed with my dear friend, the senior Senator from Nevada, one of the finest people out of the several hundred Senators with whom I have served in 29 years. I know the senior Senator from Nevada to be one who cares deeply about this institution and the way it works. He has been speaking at great length and on matters of great interest to all of us today.

I ask my distinguished friend from Nevada, is it not true the senior Senator from Nevada, like the senior Senator from Vermont and the senior Senator from Michigan who is on the floor, would have been very pleased if we had been doing the appropriations bills that by law we should have finished on September 30 rather than having to try to figure out the schedule the other side has put us in, a schedule that accomplishes, in this Senator's mind, absolutely nothing?

Mr. REID. I say to my friend from Vermont, in answering his question, through the Chair, I have experienced on this floor many times my admiration and respect for the senior Senator from Vermont. As I said earlier today, I am proud of the record of the minority with the Judiciary Committee during the time we have been in the minority. I am proud of what we did when we were in the majority. I say to the former chairman, now the ranking member, we have done some outstanding things for this President, not the least of which is approving 168 judges. I hope the American people understand this, that what we have going on this coming Wednesday does not deal with anything important in this country. There is not a thing that will be said that will be different. We have heard the speeches ad nauseam.

The first time I ever heard this—I am not sure it was original with him—but my friend Mo Udall from Arizona, when he was in the House, when there was a big battle dealing with franking, he was chairman of the franking committee and there was some kind of a dispute, and he said, everything has been said but not everyone has said it.

As I say, I do not know if that is original with him, but that is the first time I heard it. And with Estrada, with Pickering, with Owen, and with Pryor, everything has been said more than once. What in the world do we accomplish as a country, as a Senate, by spending this inordinate amount of time on these judges? These two judges and two other people who want to be judges.

I have a chart here that is right next to my friend. We have 20 percent of President Clinton's nominees who were blocked. They were blocked by filibusters or simply not holding hearings. There are different ways of blocking judges.

What we have done is, we have held hearings. I commend my friend, the

senior Senator from Vermont. You have held hearings in this process, during the 3 years he has been President—and there will be a lot more. I bet by year's end that will be maybe 175, something like that, maybe even more than that. But it will be a larger number than 168. We have turned down 4.

So 20 percent of President Clinton's nominees blocked, 2 percent of President Bush's nominees blocked. Did we hold a vigil? We complained. But as then-Majority Leader TRENT LOTT said: When he goes home, he doesn't ever have anybody come up to him saying, Why aren't you doing something about the judges? He said it is a nonissue in Mississippi. It is a nonissue all over the country, except in the minds of these people who, for some reason, think we have no obligation under the Constitution to give advice and consent to the President of the United States. I think it is in the Constitution, and we are doing that. We don't do it very often. We don't advise very much because we are not asked very much, but we should advise more. We are advising the President without having been asked. Four of these nominees, we don't think they should be judges. To protect the American people, we have failed to invoke cloture.

I will be happy to yield to my friend for a question without losing my right to the floor.

Mr. LEAHY. If I could ask him a question without his losing his right to the floor, I am sure the distinguished senior Senator from Nevada is aware of this, but he has talked about the record. Does he believe that people, including the press, might be surprised to know that in the 17 months the Democrats controlled the Senate during President Bush's current term, we confirmed 100 of President Bush's nominees and during the 17 months the Republicans were in charge of the Senate, they confirmed 68?

My point is not to say what a poor record they have; 68 would be a fine record, and they confirmed those 68 with the support of most of the Democratic Senators.

But my question to the senior Senator from Nevada is, does it seem like a little bit of crocodile tears when we hear from our friends on the other side, What is this terrible slow-up, when actually during the 17 months the Democrats were in charge, we confirmed more of President Bush's nominees, considerably more, than the Republicans had during the 17 months they have been in charge?

Mr. REID. Madam President, reclaiming my time, let me also remind the country—I don't need to remind the senior Senator from Vermont—during that period of time we had some difficult times. The Senator from Vermont received an anthrax threat; Senator DASCHLE, an anthrax threat that made people sick. We don't know where they came from. People died as a result of that anthrax. It closed down the Hart Office Building. But in spite of that, we held hearings.

I can remember going to a hearing in the basement of this Capitol—jampacked. It would have been easy for the Senator from Vermont to say we don't have room. We had the hearing.

One of the people the long hearing was held on was Judge Pickering. We held a hearing on Pickering. That was one when I was there. I know that.

There were lots of problems. In spite of all the many problems, we could have had lots of excuses, but we didn't say the Judiciary Committee room was blocked, that Senators on the Judiciary Committee couldn't go to their own offices. We didn't do that. We went ahead and processed these judges.

I extend my appreciation to the Senator from Vermont for an exemplary job as a committee chair.

I hope that, in the months to come, we will have a few more questions asked by the administration: What do you think about this person? Do you think he would be good? Let's talk about it.

We haven't had that. This is a White House where it is their way or no way.

It is amazing to me that we as a Senate, when we have a war going on as we speak—I have been here in the Chamber. I don't know what the news is. It is daytime now in Iraq. I don't know if there have been any more deaths today. There were three yesterday. I don't know what is going on in Afghanistan. But maybe we should spend some time talking about Afghanistan, Iraq, and the general war on terrorism rather than on four people who have jobs. I think that would be a pretty good use of the Senate's time.

I think we have a schedule that looks pretty good for tomorrow. I hope we can work this out pretty soon, have the leader come and do whatever closing business there is.

I have had a time today where I have been able to express what I think are the sentiments of the Senate on what we should be doing this coming Wednesday and how we could have, if you had used the time today and tomorrow to move toward the completion of this body's business. We could have had a more productive day on Wednesday and Thursday and Friday, except for this reasoning which is lost on me, where we are going to spend 30 hours on four people who have good jobs. Miguel Estrada, I understand, makes half a million dollars a year. The rest of the judges make about a half a million dollars between them.

We have staggering unemployment in this country—over 9 million people for sure. Many people are not on the rolls because they have been out of work so long.

I spent a lot of time today talking about the minimum wage and how desperate people are who work 40 hours a week at minimum wage, earning $10,700 a year—a year.

I read into the RECORD letters I got from people in Nevada where they are desperate for a job. One woman said for every opening, 50 people apply.

One woman wrote and said: I worked for the airlines for 38 years. They laid me off. I don't know what I'm going to do. She must be at least 58 years old. I assume she went to work for TWA when she was 20. She was laid off by American Airlines.

One of the women who wrote to me said she worked two minimum-wage jobs just to get money for her family. Her husband is disabled. She would move, but she can't afford to move. She is stuck.

We don't talk at all about these programs. As I said on several occasions, everything is going up; that is, the uninsured, the poor, the unemployed. Many such things that are going up should be going down. We aren't going to talk about those. No, we are going to talk about something that is going down—judicial vacancies. This is the lowest rate in almost 15 years.

So we have a lot of important work to do in the Senate, and a tremendous kink has been thrown into the apparatus. But I hope today, and I hope in a dignified way, we have shown the majority and the American people that the Senate is a partnership, a partnership between Republicans and Democrats. We can't get anything done here unless we work together. Secret schedules don't work—trying to let your Members know that on Monday we will have a couple of votes but we haven't ordered them.

What are we going to vote on? They haven't told us.

What time should our people come back? Well, votes during the day. On what? Well, State-Commerce-Justice.

As we all know, one Senator can offer an amendment and speak on it for 2 minutes or 2 hours. Another Senator has a right to offer an amendment. But what happens if suddenly the majority offers an amendment and moves to table that amendment immediately? They can do that.

They can do that. They have the majority. They can get a second on that.

It wasn't fair to our folks over here. We have been so fair to the majority. As the Senator from Michigan indicated, we work hard together. That is why it is disappointing when the majority whip came on the floor today and talked about all of their accomplishments and how little we accomplished when we were in the majority. The difference is that we worked with them to get things done. Now we stop things from happening. We can stop things from happening. We showed that today. I hope we don't have to do this on a regular basis. I think there is work that needs to be done, but it will only come to be if we work as partners and go back to the way we were a couple of weeks ago when we were working hard to pass amendments to get appropriations bills passed; where again we developed meaningful conferences where we saw people debating as has been the history of this body.

Fair credit reporting: Because of the tremendous relationship that the

chairman of the committee has with our ranking member, Senator SARBANES, we were happy to go to conference on that which would be fair. I know Senator SHELBY votes with both the majority and minority.

We have a lot to do in the Senate with so little time to complete it.

We live in a troubled world where people are so evil that they place explosive devices in cars and drive these cars and blow themselves up as well as many people as they can.

In Saudi Arabia over the weekend, with this war on terrorism, they drove into an area where there were no Americans but there were Arab workers. I don't know how many have died or who are going to die as a result of that but more than a score. Because of these senseless acts of violence, we need to work to bring about a higher standard of living—something these terrorists won't be able to appeal to the people who face very difficult economic conditions.

That is why I hope in Iraq we can have more involvement from the international community in the way of helping us pay for that situation, helping us bring in peacekeepers so they can help bring about peace in Iraq and work for a stable government run by Iraqis. Iraqis are so much more fortunate than the people of Afghanistan because of their great natural resources.

Senators DASCHLE, FRIST, MCCONNELL, and I met a short time ago with the Iraqi Governing Council. They said: People say we have the second largest oil reserves in the world. We don't have the second largest oil reserves in the world. They have the largest oil reserves in the world. They said in less than 2 years they will be producing 6 million barrels of oil a day.

In addition to the oil which they have, which is immense, they also have water. The Tigris and Euphrates Valley was spoken about. In early history, it was the garden basket of the world. They are very fortunate to live in a country with such economic potential.

Afghanistan doesn't have that same ability to develop. They need our help. They haven't been getting help as indicated by the supplemental appropriations bill. Virtually all of that went to Iraq. Hardly any went to Afghanistan. If there were ever a place for a grant, it would be Afghanistan. If there were ever a place for a loan, it is Iraq. Loan them the money and collateralize it with oil which will be produced in the future. I think it would be better for the Iraqis knowing they aren't getting handouts. That doesn't seem to be the way things are going. We need to continue to work our way through all of this.

I hope when we come back the two leaders will decide that the Commerce-State-Justice bill is something we should pass. I hope we can do it quickly. It is something that needs to be done. It is an important bill. I have gone over it in some detail.

One thing I wanted to do is talk a little bit about Veterans Day. I have talked about the veterans on several occasions today, but I hope leaders will do a good job of taking care of veterans in the future.

Like many soldiers who die on the battlefield, when Marine LCpl Donald Sparks died on the battlefield, the U.S. Government extended a helping hand to Tina, his widow, paying her a small death benefit of $6,000. With the other hand, however, Uncle Sam is reaching into her pocketbook to tax the same benefits.

As outrageous as it may be, taxing death benefits is just a symptom of a larger problem because of our failure to provide adequate benefits and incentives for the veterans and current troops of the All-Volunteer Army.

Fifty-nine years ago, we passed the GI bill for the 16 million veterans who served in World War II. Most of them went for a couple of years as the United States mobilized on a scale we hoped to never see again. The GI bill helped these veterans return to civilian life by providing opportunities for education and housing that they would not have otherwise enjoyed.

Today, our military is different. We rely on volunteers, and our security depends on our ability to maintain a steady force by recruiting and training good troops. It is in our national interest to keep turnover at a minimum.

How are we trying to accomplish this? Certainly not with a fat paycheck.

I let the majority leader know that whenever he is ready to come forward, I will be happy to yield the floor to him.

I heard from a constituent who was shocked that the Army had included applications for food stamps in the orientation material for his son-in-law, a sergeant with a young family. The fact is that soldiers' pay is barely enough for subsistence. Of course, nobody joins the military to get rich. Volunteers want to serve their country, and they appreciate the experience of military life. But in return for keeping our Nation secure, they deserve some security of their own. To provide that security, we need the GI bill which offers tax breaks, better health care, and expanded education benefits for veterans and their military families.

The Senate and House both passed military tax reform last week. President Bush should sign it into law as quickly as possible. These bills would double the death benefit to survivors to $12,000 and make it tax free. They also would allow military personnel to sell their homes without paying capital gains taxes regardless of whether they live in their houses long enough to claim a standard exemption.

Mr. LEVIN. Mr. President, will the Senator yield for a question?

Mr. REID. As I was just reading this, I think the tax law in this country is that if you sell a home you don't pay taxes on it.

I will be happy to yield to my friend from Michigan without losing my right to the floor.

Mr. LEVIN. Mr. President, one of the areas which the Senator from Nevada has led us to is the question of concurrent receipts. We are going to make some progress on that this year. I say that 90 percent of the credit for the progress we are going to make in that area belongs to the Senator from Nevada. He was modest in mentioning it here in terms of what is before the Senate. The success we have had in overcoming a veto threat from the administration—that if we finally allow people who are disabled to receive both the disability benefit as well as a retirement benefit and not take away one benefit when they receive the other—we were finally able to accomplish that because of the leadership of the senior Senator from Nevada.

I want to ask him whether it is not accurate that one of the bills which awaits our consideration would be the conference report that accompanies the Defense authorization bill which contains the provision I just mentioned which would finally allow for at least the people who have 50-percent disability or more the concurrent receipt of both their disability benefit and their retirement benefit, and end the unfairness that you cannot get a retirement benefit.

Mr. REID. My friend is absolutely right. That is such an important bill and important element of the bill. I know that some veterans groups are dissatisfied. We have done so well to get as much as we have. We will work for more in the future. I compliment the Senator from Michigan and Senator WARNER for the good work they have done. I admire and respect them for the work they have done.

I see the majority leader on the floor. I indicate that what I have talked about, this new bill, is not all encompassing. We also need to extend the child tax credit for working families; we need to renew the commitment we made in the original GI bill and restate that taking care of Veterans Day and military families should be as high a priority for our Nation as rebuilding Iraq. It is a key to maintaining a well-trained voluntary fighting force.

I say to the majority leader, if he is here ready to close, that is good. If he is not, I will have to go back to my book.

I say to my friend, I have done pretty well. If I could have the leader's attention, I hope the leader has been advised as to the apology that I made on the Senate floor. I tell the Senator that I indicated the remarks I made at the press conference last Friday were ill-chosen and showed my frustration. I apologize. I have already done that. But the leader is here and I am happy to do that. Although I did not mention his name specifically, I don't think it would be hard to figure out I was referring to the majority leader. I apologize for the choice of words. The Senator from Tennessee may be a lot of things but certainly he is not amateur. Previously today I talked about the deep

respect I have for the Senator from Tennessee, for his commitment to public service, having been a very dedicated and now famous surgeon who uses his skills all over the world when we are not in session.

I apologize, and I have done it publicly on two occasions, for using that choice of words. It showed my frustration as to what had gone on here. There is no need to talk about it now other than to say that hopefully Wednesday we can move on to bigger and better things.

Madam President, I appreciate everyone's patience and courtesy to me today. I especially apologize to the staff for keeping them as long as I have. I hope that I have been of some benefit to my friends on this side of the aisle. I hope I have not been too offensive to those on this side of the aisle.

I yield the floor.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. Madam President, with the concurrence of the distinguished majority leader, let me say that the majority leader, of course, is a dear friend, but the senior Senator from Nevada has been a very dear friend for many, many years. We campaigned the same year, I for reelection, he for the Senate. I have always been very proud of him.

When historians look back, they will see he did a great service for the Senate today in trying to put a lot of things in perspective. I will speak longer at a another time. I am doing this at the concurrence of the leader showing his usual courtesy. I will not exceed that. I will speak at a later time.

I appreciate my friend and also appreciate my friend from Tennessee.

I yield the floor.

The PRESIDING OFFICER. The majority leader.

Mr. FRIST. Madam President, I know Members have been wondering about the schedule. There will be no rollcall votes tonight. We were prepared to have votes throughout today and this evening, procedural or otherwise, but I think that will not serve any useful purpose at this late hour. The best course is probably to step back for the evening and begin fresh tomorrow, which we will do.

Today we were to begin considering a very important appropriations bill, Commerce-Justice-State appropriations bill. As a matter of fact, that bill has been pending since shortly after 1 o'clock today. Unfortunately, we were able to make no progress on that bill today. That was successfully obstructed.

I indeed respect every Senator's right to do just that, and the distinguished minority whip was within his rights to hold the floor throughout the entire afternoon and this evening.

We were prepared to offer and vote in relation to amendments to the Commerce-Justice-State bill, but that was not possible. We were told last week the other side of the aisle would not be offering their amendments today, on Monday. The two managers were working together to move forward on amendments that would be offered by Members on this side of the aisle today. Indeed, Republican Members were present today to offer and debate those amendments. I take it the other side of the aisle did not show up to do the Nation's business as it pertained to this Commerce-Justice-State bill.

I have stated repeatedly in the Senate that there is much, much work to do and that there is little time remaining to do it. Later this week, indeed, we will focus on judges as part of the unfinished business that remains before this body. I will continue to bring to the floor to the best of my ability each and every appropriations bill. If the other side of the aisle does not want to debate and discuss those bills as they are brought to the floor, that is their right.

Today our focus was on continuing the appropriations process. It is obvious that delay will occur on every front. Then, indeed, I think that is unfortunate given the amount of business we have to do.

I am sure that at some point in the future we will hear speeches about work that we did or did not get done or we were late in doing, and there will be Senators bemoaning the fact that the Senate has been unable to finish our business. Today was a missed opportunity to make progress on these important appropriations bills.

MORNING BUSINESS

Mr. FRIST. I ask 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.

LOCAL LAW ENFORCEMENT ACT OF 2003

Mr. SMITH. Madam President, I rise today to speak about the need for hate crimes legislation. On May 1, 2003, Senator KENNEDY and I introduced the Local Law Enforcement Enhancement Act, a bill that would add new categories to current hate crimes law, sending a signal that violence of any kind is unacceptable in our society.

I would like to describe one such crime that occurred in Greensburg, PA. Ian Bishop, 16, allegedly hated his 18-year old brother, Adam, because he thought he was gay. After beating his brother in the head at least 18 times with a claw hammer and wooden club, Ian dumped Adam's body in the bathtub, then went to a nearby shopping mall where he described the attack and laughed about his brother's death.

I believe that Government's first duty is to defend its citizens, to defend them against the harms that come out of hate. The Local Law Enforcement Enhancement Act is a symbol that can become substance. I believe that by passing this legislation and changing current law, we can change hearts and minds as well.

INTERNET TAX NON-DISCRIMINATION ACT

Mr. VOINOVICH. Mr. President, I rise to speak to an amendment S. 150, the Internet Tax Non-Discrimination Act of 2003.

Over the past few weeks some have mischaracterized my position concerning the Internet tax moratorium and suggested that I supported taxing the Internet or, even more inaccurately, that I supported taxing e-mail.

Nothing could be further from the truth, and I welcome the opportunity to set the record straight on the floor of the U.S. Senate. I have never and will never support taxing e-mail. That's patently ridiculous.

On October 31, 2003, the Cincinnati Enquirer correctly reported my opposition on this very important issue:

> Senator George Voinovich of Ohio has been boiled in a witches' cauldron this week by critics angered that he helped block an expanded ban of taxes on Internet services. The current Internet Tax Moratorium, which he supports, expires Saturday. Anti-tax groups making Voinovich out to be the devil incarnate are roasting the wrong guy. Voinovich favors keeping the tax moratorium on Internet access. He helped negotiate the Internet Tax Freedom Act of 1998, supported its renewal in 2001 and opposes new taxes on telecommunications services. And yes, he strongly opposes a tax on e-mail.

This newspaper and others like it in Ohio have captured the essence of my argument. The debate on S. 150 is not about taxing e-mail. This debate is about federalism, unfunded mandates, and protecting the States' rights to govern their own affairs.

To clarify my position, I will offer an amendment that expresses the sense of the Senate that e-mail should not now, nor in the future, be taxed by Federal, State, or local governments.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. SPECTER, from the Committee on Veterans' Affairs, with an amendment in the nature of a substitute and an amendment to the title:

S. 1156. A bill to amend title 38, United States Code, to improve and enhance the provision of long-term health care for veterans by the Department of Veterans Affairs, to enhance and improve authorities relating to the administration of personnel of the Department of Veterans Affairs, and for other purposes (Rept. No. 108–193).

By Ms. COLLINS, from the Committee on Governmental Affairs, without amendment:

H.R. 3159. A bill to require Federal agencies to develop and implement plans to protect the security and privacy of government computer systems from the risks posed by peer-to-peer file sharing.

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 Mrs. CLINTON:

S. 1841. A bill to amend title 10, United States code, to provide for the award of a military service medal to members of the Armed Forces who served honorably during the Cold War era; to the Committee on Armed Services.

By Mr. LUGAR:

S. 1842. A bill to provide certain exceptions from requirements for bilateral agreements with Australia and the United Kingdom for exemptions from the International Traffic in Arms Regulations; to the Committee on Foreign Relations.

By Ms. SNOWE (for herself and Mr. KENNEDY):

S. 1843. A bill to amend titles XIX and XXI of the Social Security Act to provide for FamilyCare coverage for parents of enrolled children, and for other purposes; to the Committee on Finance.

By Mr. INHOFE:

S. 1844. A bill to amend the Clean Air Act to reduce air pollution through expansion of cap and trade programs, to provide an alternative regulatory classification for units subject to the cap and trade program, and for other purposes; to the Committee on Environment and Public Works.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. COLEMAN (for himself and Mr. BAYH):

S. Con. Res. 80. A concurrent resolution urging Japan to honor its commitments under the 1986 Market-Oriented Sector-Selective (MOSS) Agreement on Medical Equipment and Pharmaceuticals, and for other purposes; to the Committee on Foreign Relations.

ADDITIONAL COSPONSORS

S. 420

At the request of Mrs. DOLE, the names of the Senator from Hawaii (Mr. AKAKA), the Senator from Utah (Mr. BENNETT), the Senator from Colorado (Mr. CAMPBELL), the Senator from Idaho (Mr. CRAIG), the Senator from Idaho (Mr. CRAPO), the Senator from Utah (Mr. HATCH), the Senator from Hawaii (Mr. INOUYE), the Senator from Arizona (Mr. MCCAIN), the Senator from Kentucky (Mr. MCCONNELL), the Senator from Maryland (Ms. MIKULSKI), the Senator from Arkansas (Mr. PRYOR), the Senator from Oregon (Mr. SMITH) and the Senator from Maine (Ms. SNOWE) were added as cosponsors of S. 420, a bill to provide for the acknowledgement of the Lumbee Tribe of North Carolina, and for other purposes.

S. 1172

At the request of Mr. FRIST, the name of the Senator from Texas (Mr. CORNYN) was added as a cosponsor of S. 1172, a bill to establish grants to provide health services for improved nutrition, increased physical activity, obesity prevention, and for other purposes.

S. 1567

At the request of Mr. FITZGERALD, the name of the Senator from Arizona (Mr. MCCAIN) was added as a cosponsor of S. 1567, a bill to amend title 31, United States Code, to improve the financial accountability requirements applicable to the Department of Homeland Security, and for other purposes.

S. 1645

At the request of Mr. CRAIG, the names of the Senator from Maine (Ms. SNOWE), the Senator from New Jersey (Mr. LAUTENBERG), the Senator from New Hampshire (Mr. SUNUNU) and the Senator from Illinois (Mr. DURBIN) were added as cosponsors of S. 1645, a bill to provide for the adjustment of status of certain foreign agricultural workers, to amend the Immigration and Nationality Act to reform the H–2A worker program under that Act, to provide a stable, legal agricultural workforce, to extend basic legal protections and better working conditions to more workers, and for other purposes.

S. 1685

At the request of Mr. GRASSLEY, the name of the Senator from Texas (Mr. CORNYN) was added as a cosponsor of S. 1685, a bill to extend and expand the basic pilot program for employment eligiblity verification, and for other purposes.

S. 1706

At the request of Mr. SCHUMER, the name of the Senator from Michigan (Mr. LEVIN) was added as a cosponsor of S. 1706, a bill to improve the National Instant Criminal Background Check System, and for other purposes.

S. 1813

At the request of Mr. LEAHY, the names of the Senator from Massachusetts (Mr. KERRY) and the Senator from Connecticut (Mr. LIEBERMAN) were added as cosponsors of S. 1813, a bill to prohibit profiteering and fraud relating to military action, relief, and reconstruction efforts in Iraq, and for other purposes.

S. 1833

At the request of Mr. DASCHLE, the name of the Senator from Louisiana (Ms. LANDRIEU) was added as a cosponsor of S. 1833, a bill to improve the health of minority individuals.

S. 1840

At the request of Mr. CONRAD, the name of the Senator from Delaware (Mr. BIDEN) was added as a cosponsor of S. 1840, a bill to amend the Food Security Act of 1985 to encourage owners and operations of privately-held farm and ranch land to voluntarily make their land available for access by the public under programs administered by States.

S. RES. 202

At the request of Mr. CAMPBELL, the name of the Senator from Connecticut (Mr. LIEBERMAN) was added as a cosponsor of S. Res. 202, a resolution expressing the sense of the Senate regarding the genocidal Ukraine Famine of 1932–33.

AMENDMENT NO. 2080

At the request of Mr. SPECTER, the names of the Senator from New York (Mrs. CLINTON), the Senator from Vermont (Mr. LEAHY), the Senator from New York (Mr. SCHUMER) and the Senator from Vermont (Mr. JEFFORDS) were added as cosponsors of amendment No. 2080 proposed to H.R. 2673, a bill making appropriations for Agriculture, Rural Development, Food and Drug Administration, and Related Agencies for the fiscal year ending September 30, 2004, and for other purposes.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Ms. SNOWE (for herself and Mr. KENNEDY):

S. 1843. A bill to amend titles XIX and XXI of the Social Security Act to provide for FamilyCare coverage for parents of enrolled children, and for other purposes; to the Committee on Finance.

Ms. SNOWE. Mr. President, I rise today to join my colleague, Senator EDWARD KENNEDY of Massachusetts, in reintroducing the FamilyCare Act of 2003, which has strong bipartisan support. First developed in 2001, FamilyCare extends health insurance coverage to more Americans by expanding eligibility for the Medicaid and State-Children's Health Insurance Program.

Increasing access to the health insurance for the uninsured is as vexing an issue as Congress will consider, and no issue is as compelling. The diagnosis is clear—over 44 million Americans aren't getting the health care they need because they lack the money to pay for it. And as the most recent Census data shows, the number of Americans without health insurance is increasing—by 2 million in 2002 alone.

And yet, the number of uninsured Americans could be even higher. If it were not for Medicaid and S–CHIP, over a million more people would not have had health coverage in 2002. The percentage of children with private coverage fell from 66.7 percent in 2001 to 63.9 percent in 2002; for adults, it slipped from 73.7 percent to 72.3 percent. Fortunately, at the same time, the number and percentage of children and non-elderly adults covered by public health insurance—primarily Medicaid or the State Children's Health Insurance Program (SCHIP)—increased.

The number of children who lost private health insurance coverage was offset from increased enrollment in public programs, which rose from 23.6 percent in 2001 to 27.1 percent in 2002; and the percentage of non-elderly adults covered rose from 9.4 percent to 10.3 percent. Taken together, this means that about 2.5 million more children and 1.6 million more non-elderly adults had health insurance coverage in 2002 because Medicaid and SCHIP expanded during the economic downturn.

We all know about the problem. The question now is, what is the best possible cure? And while we know that there is no one answer, I think we can all agree that the solutions are long overdue. I find it astonishing that here we are in the 21st century, in one of the wealthiest countries in the world, and still our citizens are going without basic coverage and care. We're talking about working families—close to three-quarters of the nearly seven million lower-income, uninsured parents in America have jobs. They just don't have access to affordable coverage.

Year after year Congress has debated this issue. Last Congress we invested $28 billion in a reserve fund to help increase the rolls of the insured in America. Then the President, in his fiscal year 2003 budget, allocated $89 billion to help the uninsured. And finally, this Congress in its fiscal year 2004 budget established a $50 billion reserve fund. Yet, no action has been taken that actually extends coverage to the uninsured.

Now is the time to act. The news that an additional 2 million Americans joined the ranks of the uninsured in 2002 should be a wake-up call. We must work together to find common ground so that we finally can take the steps necessary to help the millions of working Americans and their families who cannot afford health insurance coverage.

And while my colleagues and I are not claiming that the FamilyCare bill is the entire answer, we do believe it is a workable, uncomplicated proposal based on a proven approach that has the potential of reaching in the neighborhood of 13 million American children and their families. With so much at stake, we ought to be building on what works, and the S–CHIP program fits the bill. In just the six short years since this program passed under the leadership of Senators KENNEDY, HATCH, ROCKEFELLER and the late John Chafee, this federal-state partnership has extended coverage to over 5 million low-income children.

In my own home State of Maine under the ''Cub Care'' program, the number of children without health insurance has dropped dramatically. In 2003 alone, Maine extended health insurance coverage to more than 12,800 low-income children. Unfortunately, roughly 16,600 or one in seventeen children are still without health insurance in Maine. We can and must do more.

We should applaud states for taking the lead and helping to show us the answer to this crisis. But a massive national problem requires a national solution—and a good place to start is with the over four million children nationwide who are eligible for SCHIP benefits but remain unenrolled mostly because parents simply don't know the program exists.

Our FamilyCare measure narrows that ''coverage gap'' while at the same time adding to the roles of the insured in America by covering the parents of low income children. Low-income Americans—those with incomes below 200 percent of the poverty level, or about $36,000 for a family of four—comprise 65 percent of the uninsured. We take this approach because the facts tell us it works. We know that states that covered parents through S-CHIP saw a 16 percent increase in the number of children enrolled in their program versus only 3 percent for states that enrolled only children. . .

We also know from the Commonwealth Fund's May 2001 report that almost 90 percent of low-income children who have insured parents themselves are insured as compared to just 348 percent of children with an uninsured parent . . . And we know that low-income children with insured parents are more than twice as likely to have health insurance as children with uninsured parents.

That's because states can insure parents at the same time they insure the children—offering ''one-stop-shopping'' that also helps ensure that services hit their intended target and provides for family-based continuity of care. The FamilyCare bill adopts this proven approach and with so many pieces already in place we should be able to get moving on this because, frankly, if not now, when? And if not now, why? In these times of trouble, how could we face the American people and tell them we are unwilling to help address one of our nation's highest priorities? How could we explain that we reneged on our obligation to right this national wrong?

That's why we want to work with our Committee leadership to see that FamilyCare is included to the greatest extent possible in any proposal that the Finance Committee considers when it develops its proposal to extend coverage to the uninsured. Because, like a letter mailed without an address, benefits that aren't delivered to our children are benefits that might as well not exist. The bottom line is, parental coverage ensures that children will be more likely to be enrolled in S-CHIP, and the FamilyCare Act of 2003 will help us provide insurance to as many as 13 million parents and children.

I look forward to working with my colleagues to see that this bill gets passed and I urge you all to support this bill.

Mr. KENNEDY. Mr. President, it's a privilege to join Senator SNOWE in introducing the Family Care Act to expand health coverage to millions of families. The Family Care Act builds on the success of the Child Health Insurance Program, by expanding it to cover the parents of low income children, so that the whole family is eligible for affordable coverage. This expansion is the next logical step toward the day when the basic right to health care will be a reality for every American.

Parents across America get up every day, go to work, and play by the rules. But all their hard work does not buy them the health insurance they need to keep themselves and their loved ones healthy or to protect their family when serious illness strikes. They can't afford the coverage on their own, and their employers don't provide it. Family Care is a practical solution for millions of hardworking families, and it deserves to be a national priority.

Six years ago, Congress passed bipartisan legislation to cover uninsured children in families whose income is too high for Medicaid but not high enough to afford private coverage. Today, the Children's Health Insurance Program brings quality health care to over 5 million children. But there are still millions of children who are uninsured, even though they are eligible for coverage, and even those who are insured cannot truly enjoy a healthy life when their parents are sick and can't afford the care they need.

Our bill is an important step to build on the Children's Health Insurance Program. Over 80 percent of children who are uninsured or enrolled in Medicaid or CHIP have uninsured parents. Expanding CHIP to cover parents as well as children will make a huge difference to millions of working families.

The legislation will also help sign up the large number of children who are already eligible for health coverage through CHIP or Medicaid, but who have never enrolled. The numbers are dramatic. Ninety-five percent of low-income uninsured children are eligible for Medicaid or CHIP. If we can enroll all of these children, we will be taking a giant step toward the day when every child has the opportunity for a healthy start in life.

Our legislation makes it easier for families to register and stay covered. We also know that many families lose coverage because complicated applications and burdensome requirements make it hard to stay insured. Under our bill families will have a simple application and they won't have to enroll over and over again. When parents enroll, they will enroll their children, too.

These are long-overdue steps to give many more Americans the health coverage they deserve. Family Care is a health care bill of rights for millions of hardworking parents and their children, and I urge its prompt consideration and adoption by the Congress.

By Mr. INHOFE:

S. 1844. A bill to amend the Clean Air Act to reduce air pollution through expansion of cap and trade programs, to provide an alternative regulatory classification for units subject to the cap and trade program, and for other purposes; to the Committee on Environment and Public Works.

Mr. INHOFE. 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. 1844

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 ''Clear Skies Act of 2003''.

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

SEC. 2. EMISSION REDUCTION PROGRAMS.

Title IV of the Clean Air Act (relating to acid deposition control) (42 U.S.C. 7651, et seq.) is amended to read as follows:

TITLE IV—EMISSION REDUCTION PROGRAMS

PART A—GENERAL PROVISIONS

SEC. 401. (Reserved)

SEC. 402. DEFINITIONS.

As used in this title—

(1) The term ''affected EGU'' shall have the meaning set forth in section 421, 431, 451, or 471, as appropriate.

(2) The term ''affected facility'' or ''affected source'' means a facility or source that includes one or more affected units.

(3) The term ''affected unit'' means—

(A) under this part, a unit that is subject to emission reduction requirements or limitations under part B, C, or D or, if applicable, under a specified part or subpart; or

(B) under subpart 1 of part B or subpart 1 of part C, a unit that is subject to emission reduction requirements or limitations under that subpart.

(4) The term ''allowance'' means—

(A) an authorization, by the Administrator under this title, to emit one ton of sulfur dioxide, one ton of nitrogen oxides, or one ounce of mercury; or

(B) under subpart 1 of part B, an authorization by the Administrator under this title, to emit one ton of sulfur dioxide.

(5)(A) The term ''baseline heat input'' means, except under subpart 1 of part B and section 407, the average annual heat input used by a unit during the 3 years in which the unit had the highest heat input for the period 1998 through 2002.

(B) Notwithstanding subparagraph (A), if a unit commenced or commences operation after January 1, 2001, then ''baseline heat input'' means the manufacturer's design heat input capacity for the unit multiplied by 80 percent for coal-fired units, 50 percent for boilers that are not coal-fired, 80 percent for combustion turbine cogeneration units elected under section 407, 50 percent for combustion turbines other than simple cycle turbines, and 5 percent for simple cycle combustion turbines.

(C) A unit's heat input for a year shall be the heat input—

(i) required to be reported under section 405 for the unit, if the unit was required to report heat input during the year under that section;

(ii) reported to the Energy Information Administration for the unit, if the unit was not required to report heat input under section 405;

(iii) based on data for the unit reported to the State where the unit is located as required by State law, if the unit was not required to report heat input during the year under section 405 and did not report to the Energy Information Administration; or

(iv) based on fuel use and fuel heat content data for the unit from fuel purchase or use records, if the unit was not required to report heat input during the year under section 405 and did not report to the Energy Information Administration and the State.

(D) Not later than 3 months after the enactment of the Clear Skies Act of 2003, the Administrator shall promulgate regulations, without notice and opportunity for comment, specifying the format in which the information under subparagraphs (B)(ii) and (C)(ii), (iii), or (iv) shall be submitted. Not later than 9 months after the enactment of the Clear Skies Act of 2003, the owner or operator of any unit under subparagraph (B)(ii) or (C)(ii), (iii), or (iv) to which allowances may be allocated under section 424, 434, 454, or 474 shall submit to the Administrator such information. The Administrator is not required to allocate allowances under such sections to a unit for which the owner or operator fails to submit information in accordance with the regulations promulgated under this subparagraph.

(6) The term ''coal'' means any solid fuel classified as anthracite, bituminous, subbituminous, or lignite.

(7) The term ''coal-derived fuel'' means any fuel (whether in a solid, liquid, or gaseous state) produced by the mechanical, thermal, or chemical processing of coal.

(8) The term ''coal-fired'' with regard to a unit means, except under subpart 1 of part B, subpart 1 of part C, and sections 424 and 434, combusting coal or any coal-derived fuel alone or in combination with any amount of any other fuel in any year.

(9) The term ''cogeneration unit'' means, except under subpart 1 of part B and subpart 1 of part C, a unit that produces through the sequential use of energy:

(A) electricity; and

(B) useful thermal energy (such as heat or steam) for industrial, commercial, heating, or cooling purposes.

(10) The term ''combustion turbine'' means any combustion turbine that is not self-propelled. The term includes, but is not limited to, a simple cycle combustion turbine, a combined cycle combustion turbine and any duct burner or heat recovery device used to extract heat from the combustion turbine exhaust, and a regenerative combustion turbine. The term does not include a combined turbine in an integrated gasification combined cycle plant.

(11) The term ''commence commercial operation'' with regard to a unit means the start up of the unit's combustion chamber and the commencement of the generation of electricity for sale.

(12) The term ''compliance plan'' means either—

(A) a statement that the facility will comply with all applicable requirements under this title, or

(B) under subpart 1 of part B or subpart 1 of part C, where applicable, a schedule and description of the method or methods for compliance and certification by the owner or operator that the facility is in compliance with the requirements of that subpart.

(13) The term ''continuous emission monitoring system'' (CEMS) means the equipment as required by section 405, used to sample, analyze, measure, and provide on a continuous basis a permanent record of emissions and flow (expressed in pounds per million British thermal units (lbs/mmBtu), pounds per hour (lbs/hr) or such other form as the Administrator may prescribe by regulations under section 405.

(14) The term ''designated representative'' means a responsible person or official authorized by the owner or operator of a unit and the facility that includes the unit to represent the owner or operator in matters pertaining to the holding, transfer, or disposition of allowances, and the submission of and compliance with permits, permit applications, and compliance plans.

(15) The term ''duct burner'' means a combustion device that uses the exhaust from a combustion turbine to burn fuel for heat recovery.

(16) The term ''fossil fuel'' means natural gas, petroleum, coal, or any form of solid, liquid, or gaseous fuel derived from such material.

(17) The term ''fossil fuel-fired'' with regard to a unit means combusting fossil fuel, alone or in combination with no more than ten percent of other fuel.

(18) The term ''fuel oil'' means a petroleum-based fuel, including diesel fuel or petroleum derivatives.

(20) The term ''gas-fired'' with regard to a unit means, except under subpart 1 of part B and subpart 1 of part C, combusting only natural gas or fuel oil, with natural gas comprising at least 90 percent, and fuel oil comprising no more than 10 percent, of the unit's total heat input in any year.

(21) The term ''gasify'' means to convert carbon-containing material into a gas consisting primarily of carbon monoxide and hydrogen.

(22) The term ''generator'' means a device that produces electricity and, under subpart 1 of part B and subpart 1 of part C, that is reported as a generating unit pursuant to Department of Energy Form 860.

(23) The term ''heat input'' with regard to a specific period of time means the product (in mmBtu/time) of the gross calorific value of the fuel (in mmBtu/lb) and the fuel feed rate into a unit (in lb of fuel/time) and does not include the heat derived from preheated combustion air, recirculated flue gases, or exhaust.

(24) The term ''integrated gasification combined cycle plant'' means any combination of equipment used to gasify fossil fuels (with or without other material) and then burn the gas in a combined cycle combustion turbine.

(25) The term ''oil-fired'' with regard to a unit means, except under sections 424 and 434, combusting fuel oil for 10 percent or more of the unit's total heat input, and combusting no coal or coal-derived fuel, in any year.

(26) The term ''owner or operator'' with regard to a unit or facility means, except for subpart 1 of part B and subpart 1 of part C, any person who owns, leases, operates, controls, or supervises the unit or the facility.

(27) The term ''permitting authority'' means the Administrator, or the State or local air pollution control agency, with an approved permitting program under title V of the Act.

(28) The term ''potential electrical output'' with regard to a generator means the nameplate capacity of the generator multiplied by 8,760 hours.

(29) The term ''simple cycle combustion turbine'' means a combustion turbine that does not extract heat from the combustion turbine exhaust gases.

(30) The term ''stationary source'' means any building, structure, facility, or installation located on one or more contiguous or adjacent properties under common control or ownership of the same person or persons which emits or may emit any air pollutant subject to regulations under the Clear Skies Act of 2003.

(31) The term ''State'' means—

(A) one of the 48 contiguous States, Alaska, Hawaii, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, or the Commonwealth of the Northern Mariana Islands; or

(B) under subpart 1 of part B and subpart 1 of part C, one of the 48 contiguous States or the District of Columbia.

(32) The term ''unit'' means—

(A) a fossil fuel-fired boiler, combustion turbine, or integrated gasification combined cycle plant; or

(B) under subpart 1 of part B and subpart 1 of part C, a fossil fuel-fired combustion device.

(33) The term ''utility unit'' shall have the meaning set forth in section 411.

(34) The term ''year'' means calendar year.

SEC. 403. ALLOWANCE SYSTEM.

(a) ALLOCATIONS IN GENERAL.—

(1) For the emission limitation programs under this title, the Administrator shall allocate annual allowances for an affected unit, to be held or distributed by the designated representative of the owner or operator in accordance with this title as follows—

(A) sulfur dioxide allowances in an amount equal to the annual tonnage emission limitation calculated under section 413, 414, 415, or 416, except as otherwise specifically provided elsewhere in subpart 1 of part B, or in an amount calculated under section 424 or 434,

(B) nitrogen oxides allowances in an amount calculated under section 454, and

(C) mercury allowances in an amount calculated under section 474.

(2) Notwithstanding any other provision of law to the contrary, the allocation of any allowances for any unit or facility under sections 424, 434, 454, and 474 shall not be enjoined.

(3) Allowances shall be allocated by the Administrator without cost to the recipient, in accordance with this title.

(b) ALLOWANCE TRANSFER SYSTEM.—Allowances allocated or sold by the Administrator under this title may be transferred among designated representatives of the owners or operators of affected facilities under this title and any other person, as provided by the allowance system regulations promulgated by the Administrator. With regard to sulfur dioxide allowances, the Administrator shall implement this subsection under 40 C.F.R. Part 73 (2002), amended as appropriate by the Administrator. With regard to nitrogen oxides allowances and mercury allowances, the Administrator shall implement this subsection by promulgating regulations not later than 24 months after the date of enactment of the Clear Skies Act of 2003. The regulations under this subsection shall establish the allowance system prescribed under this section, including, but not limited to, requirements for the allocation, transfer, and use of allowances under this title. Such regulations shall prohibit the use of any allowance prior to the calendar year for which the allowance was allocated and shall provide, consistent with the purposes of this title, for the identification of unused allowances, and for such unused allowances to be carried forward and added to allowances allocated in subsequent years, except as otherwise provided in section 425. Such regulations shall provide, or shall be amended to provide, that transfers of allowances shall not be effective until certification of the transfer, signed by a responsible official of the transferor, is received and recorded by the Administrator.

(c) ALLOWANCE TRACKING SYSTEM.—The Administrator shall promulgate regulations establishing a system for issuing, recording, and tracking allowances, which shall specify all necessary procedures and requirements for an orderly and competitive functioning of the allowance system. Such system shall provide, by twenty-four months prior to the compliance year, for one or more facility-wide accounts for holding sulfur dioxide allowances, nitrogen oxides allowances, and, if applicable, mercury allowances for all affected units at an affected facility. With regard to sulfur dioxide allowances, the Administrator shall implement this subsection under 40 C.F.R. Part 73 (2002), amended as appropriate by the Administrator. With regard to nitrogen oxides allowances and mercury allowances, the Administrator shall implement this subsection by promulgating regulations not later than 24 months after the date of enactment of the Clear Skies Act of 2003. All allowance allocations and transfers shall, upon recording by the Administrator, be deemed a part of each unit's or facility's permit requirements pursuant to section 404, without any further permit review and revision.

(d) NATURE OF ALLOWANCES.—A sulfur dioxide allowance, nitrogen oxides allowance, or mercury allowance allocated or sold by the Administrator under this title is a limited authorization to emit one ton of sulfur dioxide, one ton of nitrogen oxides, or one ounce of mercury, as the case may be, in accordance with the provisions of this title. Such allowance does not constitute a property right. Nothing in this title or in any other provision of law shall be construed to limit the authority of the United States to terminate or limit such authorization. Nothing in this section relating to allowances shall be construed as affecting the application of, or compliance with, any other provision of this Act to an affected unit or facility, including the provisions related to applicable National Ambient Air Quality Standards and State implementation plans. Nothing in this section shall be construed as requiring a change of any kind in any State law regulating electric utility rates and charges or affecting any State law regarding such State regulation or as limiting State regulation (including any prudency review) under such a State law. Nothing in this section shall be construed as modifying the Federal Power Act or as affecting the authority of the Federal Energy Regulatory Commission under that Act. Nothing in this title shall be construed to interfere with or impair any program for competitive bidding for power supply in a State in which such program is established. Allowances, once allocated or sold to a person by the Administrator, may be received, held, and temporarily or permanently transferred in accordance with this title and the regulations of the Administrator without regard to whether or not a permit is in effect under title V of the Clean Air Act or section 404 of the Clear Skies Act of 2003 with respect to the unit for which such allowance was originally allocated and recorded.

(e) PROHIBITION.—

(1) It shall be unlawful for any person to hold, use, or transfer any allowance allocated or sold by the Administrator under this title, except in accordance with regulations promulgated by the Administrator.

(2) It shall be unlawful for any affected unit or for the affected units at a facility to emit sulfur dioxide, nitrogen oxides, and mercury, as the case may be, during a year in excess of the number of allowances held for that unit or facility for that year by the designated representative as provided in sections 412(c), 422, 432, 452, and 472.

(3) The owner or operator of a facility may purchase allowances directly from the Administrator to be used only to meet the requirements of sections 422, 432, 452, and 472, as the case may be, for the year in which the purchase is made or the prior year. Not later than 36 months after the date of enactment of the Clear Skies Act of 2003, the Administrator shall promulgate regulations providing for direct sales of sulfur dioxide allowances, nitrogen oxides allowances, and mercury allowances to an owner or operator of a facility. The regulations shall provide that—

(A) such allowances may be used only to meet the requirements of section 422, 432, 452, and 472, as the case may be, for such facility and for the year in which the purchase is made or the prior year,

(B) each such sulfur dioxide allowance shall be sold for $2,000, each such nitrogen oxides allowance shall be sold for $4,000, and each such mercury allowance shall be sold for $2,187.50, with such prices adjusted for inflation based on the Consumer Price Index

on the date of enactment of the Clear Skies Act of 2003 and annually thereafter,

(C) the proceeds from any sales of allowances under subparagraph (B) shall be, in accordance with paragraph (j), deposited in the Compliance Assistance Account,

(D) except for allowances subject to (E), the allowances directly purchased for use for the year specified in subparagraph (A) shall be, on a pro rata basis, taken from, and reduce, the amount of sulfur dioxide allowances, nitrogen oxides allowances, or mercury allowances, as the case may be, that would otherwise be allocated under section 423, 453, or 473 starting for the second year after the specified year and continuing for each subsequent year as necessary,

(E) if the designated representative does not use any such allowance in accordance with paragraph (A) the designated representative shall hold the allowance for deduction by the Administrator. The Administrator shall deduct the allowance without refund or other form of recompense.

(4) Allowances may not be used prior to the calendar year for which they are allocated but may be used in succeeding years. Nothing in this section or in the allowance system regulations shall relieve the Administrator of the Administrator's permitting, monitoring and enforcement obligations under this Act, nor relieve affected facilities of their requirements and liabilities under the Act.

(f) COMPETITIVE BIDDING FOR POWER SUPPLY.—Nothing in this title shall be construed to interfere with or impair any program for competitive bidding for power supply in a State in which such program is established.

(g) APPLICABILITY OF THE ANTITRUST LAWS.—(1) Nothing in this section affects—

(A) the applicability of the antitrust laws to the transfer, use, or sale of allowances, or

(B) the authority of the Federal Energy Regulatory Commission under any provision of law respecting unfair methods of competition or anticompetitive acts or practices.

(2) As used in this section, ''antitrust laws'' means those Acts set forth in section 1 of the Clayton Act (15 U.S.C. 12), as amended.

(h) PUBLIC UTILITY HOLDING COMPANY ACT.—The acquisition or disposition of allowances pursuant to this title including the issuance of securities or the undertaking of any other financing transaction in connection with such allowances shall not be subject to the provisions of the Public Utility Holding Company Act of 1935.

(i) INTERPOLLUTANT TRADING.—Not later than July 1, 2009, the Administrator shall furnish to the Congress a study evaluating the environmental and economic consequences of amending this title to permit trading sulfur dioxide allowances for nitrogen oxides allowances and nitrogen oxides allowances for sulfur dioxide allowances.

(j) COMPLIANCE ASSISTANCE ACCOUNT.—An account shall be established by the Secretary of Energy in consultation with the Administrator:

(1) Payments or monies deposited in this account in accordance with this title shall be used for the purpose of developing emission control technologies through direct grants to affected units that demonstrate new control technologies regulated under this title.

(2) The Secretary of Energy in consultation with the Administrator shall promulgate regulations with notice and opportunity for comment to establish criteria for affected units to quality for this subsection.

SEC. 404. PERMITS AND COMPLIANCE PLANS.

(a) PERMIT PROGRAM.—The provisions of this title shall be implemented, subject to section 403, by permits issued to units and facilities subject to this title and enforced in accordance with the provisions of title V, as modified by this title. Any such permit issued by the Administrator, or by a State with an approved permit program, shall prohibit—

(1) annual emissions of sulfur dioxide, nitrogen oxides, and mercury in excess of the number of allowances required to be held in accordance with sections 412(c), 422, 432, 452, and 472,

(2) exceeding applicable emissions rates under section 441,

(3) the use of any allowance prior to the year for which it was allocated and

(4) contravention of any other provision of the permit.

No permit shall be issued that is inconsistent with the requirements of this title, and title V as applicable.

(b) COMPLIANCE PLAN.—Each initial permit application shall be accompanied by a compliance plan for the facility to comply with its requirements under this title. Where an affected facility consists of more than one affected unit, such plan shall cover all such units, and such facility shall be considered a ''facility'' under section 502(c). Nothing in this section regarding compliance plans or in title V shall be construed as affecting allowances.

(1) Submission of a statement by the owner or operator, or the designated representative of the owners and operators, of a unit subject to the emissions limitation requirements of sections 412(c), 413, 414, and 441, that the unit will meet the applicable emissions limitation requirements of such sections in a timely manner or that, in the case of the emissions limitation requirements of sections 412(c), 413, and 414, the owners and operators will hold sulfur dioxide allowances in the amount required by section 412(c), shall be deemed to meet the proposed and approved compliance planning requirements of this section and title V, except that, for any unit that will meet the requirements of this title by means of an alternative method of compliance authorized under section 413 (b), (c), (d), or (f), section 416, and section 441 (d) or (e), the proposed and approved compliance plan, permit application and permit shall include, pursuant to regulations promulgated by the Administrator, for each alternative method of compliance a comprehensive description of the schedule and means by which the unit will rely on one or more alternative methods of compliance in the manner and time authorized under subpart 1 of part B or subpart 1 of part C.

(2) Submission of a statement by the owner or operator, or the designated representative, of a facility that includes a unit subject to the emissions limitation requirements of sections 422, 432, 452, and 472 that the owner or operator will hold sulfur dioxide allowances, nitrogen oxide allowances, and mercury allowances, as the case may be, in the amount required by such sections shall be deemed to meet the proposed and approved compliance planning requirements of this section and title V with regard to subparts A through D.

(3) Recording by the Administrator of transfers of allowances shall amend automatically, and will not reopen or require reopening of, any or all applicable proposed or approved permit applications, compliance plans and permits.

(c) PERMITS.—The owner or operator of each facility under this title that includes an affected unit subject to title V shall submit a permit application and compliance plan with regard to the applicable requirements under sections 412(c), 422, 432, 441, 452, and 472 for sulfur dioxide emissions, nitrogen oxide emissions, and mercury emissions from such unit to the permitting authority in accordance with the deadline for submission of permit applications and compliance plans under title V. The permitting authority shall issue a permit to such owner or operator, or the designated representative of such owner or operator, that satisfies the requirements of title V and this title.

(d) AMENDMENT OF APPLICATION AND COMPLIANCE PLAN.—At any time after the submission of an application and compliance plan under this section, the applicant may submit a revised application and compliance plan, in accordance with the requirements of this section.

(e) PROHIBITION.—

(1) It shall be unlawful for any person to operate any facility subject to this title except in compliance with the terms and requirements of a permit application and compliance plan (including amendments thereto) or permit issued by the Administrator or a State with an approved permit program. For purposes of this subsection, compliance, as provided in section 504(f), with a permit issued under title V which complies with this title for facilities subject to this title shall be deemed compliance with this subsection as well as section 502(a).

(2) In order to ensure reliability of electric power, nothing in this title or title V shall be construed as requiring termination of operations of a unit serving a generator for failure to have an approved permit or compliance plan under this section.

(f) CERTIFICATE OF REPRESENTATION.—No permit shall be issued under this section to an affected unit or facility until the designated representative of the owners or operators has filed a certificate of representation with regard to matters under this title, including the holding and distribution of allowances and the proceeds of transactions involving allowances.

(g) MULTIPLE OWNERS.—No permit shall be issued under this section to an affected unit until the designated representative of the owners or operators has filed a certificate of representation with regard to matters under this title, including the holding and distribution of allowances and the proceeds of transactions involving allowances. Where there are multiple holders of a legal or equitable title to, or a leasehold interest in, such a unit, or where a utility or industrial customer purchases power from an affected unit (or units) under life-of-the-unit, firm power contractual arrangements, the certificate shall state:

(1) that allowances and the proceeds or transactions involving allowance will be deemed to be held or distributed in proportion to each holder's legal, equitable, leasehold, or contractual reservation or entitlement, or

(2) if such multiple holders have expressly provided for a different distribution of allowances by contract, that allowances and the proceeds of transactions involving allowances will be deemed to be held or distributed in accordance with the contract.

A passive lessor, of a person who has an equitable interest through such lessor, whose rental payments are not based, either directly or indirectly, upon the revenues or income from the affected unit shall not be deemed to be a holder of a legal, equitable, leasehold, or contractual interest for the purposes of holding or distributing allowances as provided in this subsection, unless expressly provided for in the leasehold agreement. Except as otherwise provided in this subsection, where all legal or equitable title to or interest in an affected unit is held by a single person, the certification shall state that all allowances received by the unit are deemed to be held for that person.

SEC. 405. MONITORING, REPORTING, AND RECORDKEEPING REQUIREMENTS.

(a) APPLICABILITY.—

(1)(A) The owner and operator of any facility subject to this title shall be required to install and operate CEMS on each affected unit subject to subpart 1 of part B or subpart 1 of part C at the facility, and to quality assure the data, for sulfur dioxide, nitrogen oxides, opacity, and volumetric flow at each such unit.

(B) The Administrator shall, by regulations, specify the requirements for CEMS under subparagraph (A), for any alternative monitoring or compliance system that is demonstrated as providing information which is reasonably of the same precision, reliability, accessibility, and timeliness as that provided by CEMS, and for record-keeping and reporting of information from such systems. Such regulations may include limitations on the use of alternative compliance methods by units equipped with an alternative monitoring system as may be necessary to preserve the orderly functioning of the allowance system, and which will ensure to a reasonable extent the emissions reductions contemplated by this title. Where two or more units utilize a single stack, a separate CEMS shall not be required for each unit, and for such units the regulations shall require that the owner or operator collect sufficient information to permit reliable compliance determinations for each such unit.

(2)(A) The owner and operator of any facility subject to this title shall be required to install and operate CEMS to monitor the emissions from each affected unit at the facility, and to quality assure the data for—

(i) sulfur dioxide, opacity, and volumetric flow for all affected units subject to subpart 2 of part B at the facility,

(ii) nitrogen oxides for all affected units subject to subpart 2 of part C at the facility, and

(iii) mercury for all affected units subject to part D at the facility.

(B)(i) The Administrator may specify an alternative monitoring or compliance system for determining mercury emissions. In specifying such alternative monitoring or compliance systems, the lack of commercially available appropriate and reasonable vendor guarantees shall constitute a reasonable and permissible basis for specifying alternative monitoring or compliance systems for mercury.

(ii) The regulations under clause (i) may include limitations on the use of alternative compliance methods by units equipped with an alternative monitoring system as may be necessary to preserve the orderly functioning of the allowance system, and which will ensure to a reasonable extent the emissions reductions contemplated by this title.

(iii) The regulations under clause (i) shall not require a separate CEMS or other monitoring system for each unit where two or more units utilize a single stack and shall require that the owner or operator collect sufficient information to permit reliable compliance determinations for such units.

(b) DEADLINES.—

(1) NEW UTILITY UNITS.—Upon commencement of commercial operation of each new utility unit under subpart I of part B, the unit shall comply with the requirements of subsection (a)(1).

(2) DEADLINE FOR AFFECTED UNITS UNDER SUBPART 2 OF PART B FOR INSTALLATION AND OPERATION OF CEMS.—By the later of the date 12 months before the commencement date of the sulfur dioxide allowance requirement of section 422, or the date on which the unit commences operation, the owner or operator of each affected unit under subpart 2 of part B shall install and operate CEMS, quality assure the data, and keep records and reports in accordance with the regulations issued under paragraph (a)(2) with regard to sulfur dioxide, opacity, and volumetric flow.

(3) DEADLINE FOR AFFECTED UNITS UNDER SUBPART 3 OF PART B FOR INSTALLATION AND OPERATION OF CEMS.—By the first covered year or the. date on which the unit commences commercial operation, the owner or operator of each affected unit under subpart 3 of part B shall install and operate CEMS, quality assure the data, and keep records and reports in accordance with the regulations issued under paragraph (a)(2) with regard to sulfur dioxide and volumetric flow.

(4) DEADLINE FOR AFFECTED UNITS UNDER SUBPART 2 OF PART C FOR INSTALLATION AND OPERATION OF CEMS.—By the later of the date the nitrogen oxides allowance requirement under section 452, or the date on which the unit commences operation, the owner or operator of each affected unit under subpart 2 of part C shall install and operate CEMS, quality assure the data, and keep records and reports in accordance with the regulations issued under paragraph (a)(2) with regard to nitrogen oxides.

(5) DEADLINE FOR AFFECTED UNITS UNDER PART D FOR INSTALLATION AND OPERATION OF CEMS.—By the later of the date 12 months before the commencement date of the mercury allowance requirement of section 472 applies to such unit and commences commercial operation, or the date on which the unit commences operation, the owner or operator of each affected unit under part D shall install and operate CEMS, quality assure the data, and keep records and reports in accordance with the regulations issued under paragraph (a)(2) with regard to mercury.

(c) UNAVAILABILITY OF EMISSIONS DATA.—If CEMS data or data from an alternative monitoring system approved by the Administrator under subsection (a) is not available for any affected unit during any period of a calendar year in which such data is required under this title, and the owner or operator cannot provide information, reasonably satisfactory to the Administrator, on emissions during that period, the Administrator in coordination with the owner shall calculate emissions for that period pursuant to regulations promulgated for such purpose. The owner or operator shall be liable for excess emissions fees and offsets under section 406 in accordance with such regulations. Any fee due and payable under this subsection shall not diminish the liability of the unit's owner or operator for any fine, penalty, fee or assessment against the unit for the same violation under any other section of this Act.

(d) IMPLEMENTATION.—With regard to sulfur dioxide, nitrogen oxides, opacity, and volumetric flow, the Administrator shall implement subsections (a) and (c) under 40 C.F.R. Part 75 (2002), amended as appropriate by the Administrator. With regard to mercury, the Administrator shall implement subsections (a) and (c) by issuing proposed regulations not later than 36 months before the commencement date of the mercury allowance requirement under section 472 and final regulations not later than 24 months before that commencement date.

(e) PROHIBITION.—It shall be unlawful for the owner or operator of any facility subject to this title to operate a facility without complying with the requirements of this section, and any regulations implementing this section.

SEC. 406. EXCESS EMISSIONS PENALTY; GENERAL COMPLIANCE WITH OTHER PROVISIONS; ENFORCEMENT.

(a) EXCESS EMISSIONS PENALTY.—

(1) AMOUNT FOR OXIDES OF NITROGEN.—The owner or operator of any unit subject to the requirements of section 441 that emits nitrogen oxides for any calendar year in excess of the allowances the operator holds for the unit for that calendar year shall be liable for the payment of an excess emissions penalty, except where such emission were authorized pursuant to section 110(f). That penalty shall be calculated on the basis of the number of tons emitted in excess of the number of allowances held by the operator for the unit for that calendar year multiplied by $2,000.

(2) AMOUNT FOR SULFUR DIOXIDE BEFORE 2008.—The owner or operator of any unit subject to the requirements of section 412(c) that emits sulfur dioxide for any calendar year before 2008 in excess of the sulfur dioxide allowances the owner or operator holds for use for the unit for that calendar year shall be liable for the payment of an excess emissions penalty, except where such emissions were authorized pursuant to section 110(f) or (g). That penalty shall be calculated as follows:

(A) the product of the unit's excess emissions (in tons) multiplied by $2,000, if within thirty days after the date on which the owner or operator was required to hold sulfur dioxide allowances—

(i) the owner or operator offsets the excess emissions in accordance with paragraph (b)(1); and

(ii) the Administrator receives the penalty payment required under this subparagraph.

(B) if the requirements of clause (A)(i) or (A)(ii) are not met, the product of the unit's excess emissions (in tons) multiplied by $4,000.

(3) AMOUNT FOR SULFUR DIOXIDE AFTER 2007.—If the units at a facility that are subject to the requirements of section 412(c) emit sulfur dioxide for any calendar year after 2007 in excess of the sulfur dioxide allowances that the owner or operator of the facility holds for use for the facility for that calendar year, the owner or operator shall be liable for the payment of an excess emissions penalty, except where such emissions were authorized pursuant to section 110(f). That penalty shall be calculated under paragraph (4)(A) or (4)(B).

(4) UNITS SUBJECT TO SECTIONS 422, 432, 452, or 472.—If the units at a facility that are subject to the requirements of section 422, 432, 452, or 472 emit sulfur dioxide, nitrogen oxides, or mercury for any calendar year in excess of the sulfur dioxide allowances, nitrogen oxides allowances, or mercury allowances, as the case may be, that the owner or operator of the facility holds for use for the facility or units for that calendar year, the owner or operator shall be liable for the payment of an excess emissions penalty, except where such emissions were authorized pursuant to section 110(f). That penalty shall be calculated as follows:

(A) the product of the units' excess emissions (in tons or, for mercury emissions, in ounces) multiplied by the annual average price of sulfur dioxide allowances, nitrogen oxides allowances, or mercury allowances, as the case may be, sold between allowance holders and recorded in the Allowance Tracking System, if within sixty days after the date on which the owner or operator was required to hold sulfur dioxide, nitrogen oxides allowance, or mercury allowances as the case may be—

(i) the owner or operator offsets the excess emissions in accordance with paragraph (b)(2) or (b)(3), as applicable; and

(ii) the Administrator receives the penalty required under this subparagraph.

(B) if the requirements of clause (A)(i) or (A)(ii) are not met, the amount of the units' excess emissions (in tons or, for mercury emissions, in ounces) multiplied by the average annual price of sulfur dioxide allowances, nitrogen oxides allowances, or mercury allowances, as the case may be, sold between allowance holders and recorded in the Allowance Tracking System.

(5) PAYMENT.—Any penalty under paragraph 1, 2, 3, or 4 shall be due and payable without demand to the Administrator as provided in regulations issued by the Administrator. With regard to the penalty under

paragraph 1, the Administrator shall implement this paragraph under 40 CFR Part 77 (2002), amended as appropriate by the Administrator. With regard to the penalty under paragraphs 2, 3, and 4, the Administrator shall implement this paragraph by issuing regulations no later than 24 months after the date of enactment of the Clear Skies Act of 2003. Any such payment shall be deposited in the Compliance Assistance Account.

(b) EXCESS EMISSIONS OFFSET.—

(1) The owner or operator of any unit subject to the requirements of section 412(c) that emits sulfur dioxide during any calendar year before 2008 in excess of the sulfur dioxide allowances held for the unit for the calendar year shall be liable to offset the excess emissions by an equal tonnage amount in the following calendar year, or such longer period as the Administrator may prescribe. The Administrator shall deduct sulfur dioxide allowances equal to the excess tonnage from those held for the facility for the calendar year, or succeeding years during which offsets are required, following the year in which the excess emissions occurred.

(2) If the units at a facility that are subject to the requirements of section 412(c) emit sulfur dioxide for a year after 2007 in excess of the sulfur dioxide allowances that the owner or operator of the facility holds for use for the facility for that calendar year, the owner or operator shall be liable to offset the excess emissions by an equal amount of tons in the following calendar year, or such longer period as the Administrator may prescribe. The Administrator shall deduct sulfur dioxide allowances equal to the excess emissions in tons from those held for the facility for the year, or succeeding years during which offsets are required, following the year in which the excess emissions occurred.

(3) If the units at a facility that are subject to the requirements of section 422, 432, 452, or 472 emit sulfur dioxide, nitrogen oxides, or mercury for any calendar year in excess of the sulfur dioxide allowances, nitrogen oxides allowances, or mercury allowances, as the case may be, that the owner or operator of the facility holds for use for the facility for that calendar year, the owner or operator shall be liable to offset the excess emissions by an equal amount of tons or, for mercury, ounces in the following calendar year, or such longer period as the Administrator may prescribe. The Administrator shall deduct sulfur dioxide allowances, nitrogen oxide allowances, or mercury allowances, as the case may be, equal to the excess emissions in tons or, for mercury, ounces from those held for the facility for the year, or succeeding years during which offsets are required, following the year in which the excess emissions occurred.

(c) PENALTY ADJUSTMENT.—The Administrator shall, by regulation, adjust the penalty specified in subsection (a)(1) and (a)(2) for inflation, based on the Consumer Price Index, on November 15, 1990, and annually thereafter.

(d) PROHIBITION.—It shall be unlawful for the owner or operator of any unit or facility liable for a penalty and offset under this section to fail—

(1) to pay the penalty under subsection (a); or

(2) to offset excess emissions as required by subsection (b).

(e) SAVINGS PROVISION.—Nothing in this title shall limit or otherwise affect the application of section 113, 114, 120, or 304 except as otherwise explicitly provided in this title.

(f) OTHER REQUIREMENTS.—Except as expressly provided, compliance with the requirements of this title shall not exempt or exclude the owner or operator of any facility subject to this title from compliance with any other applicable requirements of this Act. Notwithstanding any other provision of this Act, no State or political subdivision thereof shall restrict or interfere with the transfer, sale, or purchase of allowances under this title.

(g) VIOLATIONS.—Violation by any person subject to this title of any prohibition of, requirement of, or regulation promulgated pursuant to this title shall be a violation of this Act. In addition to the other requirements and prohibitions provided for in this title, the operation of any affected unit or the affected units at a facility to emit sulfur dioxide, nitrogen oxides, or mercury in violation of section 412(c), 422, 432, 452, and 472, as the case may be, shall be deemed a violation, with each ton or, in the case of mercury, each ounce emitted in excess of allowances held constituting a separate violation.

SEC. 407. ELECTION FOR ADDITIONAL UNITS.

(a) APPLICABILITY.—The owner or operator of any unit that is not an affected EGU under subpart 2 of part B and subpart 2 of part C and whose emissions of sulfur dioxide and nitrogen oxides are vented only through a stack or duct may elect to designate such unit as an affected unit under subpart 2 of part B and subpart 2 of part C. If the owner or operator elects to designate a unit that is solid fuel-fired and emits mercury vented only through a stack or duct, the owner or operator shall also designate the unit as an affected unit under part D. If elected unit fires only gaseous fuels, designation may be made under subpart 2 of part C only.

(b) APPLICATION.—The owner or operator making an election under subsection (a) shall submit an application for the election to the Administrator for approval.

(c) APPROVAL.—If an application for an election under subsection (b) meets the requirements of subsection (a), the Administrator shall approve the designation as an affected unit under subpart 2 of part B and subpart 2 of part C and, if applicable, under part D, subject to the requirements in subsections (d) through (m).

(d) ESTABLISHMENT OF BASELINE.—

(1) After approval of the designation under subsection (c), the owner or operator shall install and operate GEMS on the unit, and shall quality assure the data, in accordance with the requirements of paragraph (a)(2) and subsections (c) through (e) of section 405, except that, where two or more units utilize a single stack, separate monitoring shall be required for each unit unless all units utilizing the single stack are designated as affected units.

(2) The baselines for heat input and sulfur dioxide and nitrogen oxides emission rates, as the case may be, for the unit shall be the unit's heat input and the emission rates of sulfur dioxide and nitrogen oxides for a year starting after approval of the designation under subsection (c). The Administrator shall issue regulations requiring the unit's baselines for heat input and sulfur dioxide and nitrogen oxides emission rates to be based on the same year and specifying minimum requirements concerning the percentage of the unit's operating hours for which quality assured CEMS data must be available during such year. The baseline heat input and emissions baselines in this subparagraph shall be calculated, at the election of the owner or operator of the relevant unit, under (i) or (ii):

(i) for heat input, the average of the unit's highest heat input for three years of the five years before the year for which the Administrator is determining the allocations and for emissions baselines, the average of the relevant emissions for the same years used to determine heat input.

(ii) for heat input, the average of any period of twenty-four consecutive months during a ten-year period immediately prior to submission of an application under subsection (b), and for emissions baselines, the average of the relevant emissions for the same twenty-four month period used to calculate heat input.

(3) The regulations implementing subparagraphs (2) shall authorize the use of any reliable data on emissions of sulfur dioxide and nitrogen oxides in addition to, and other than, data collected pursuant to paragraph (1), including, but not limited to, alternative data that has been used to determine compliance with a regulatory or monitoring requirement under this Act or a comparable State law if the data establishes a reliable measure of heat input and sulfur dioxide and nitrogen oxides emissions over a simultaneous period of time; or if such data is not available, the Administrator may prescribe a baseline based on alternative reliable data. In determining the reliability of data, the Administrator may consider the cost of generating more reliable data compared to the quantitative importance of the resulting gain in quantifying emissions.

(e) EMISSION LIMITATIONS.—After approval of the designation of the unit under paragraph (c), the unit shall become:

(1) an affected unit under subpart 2 of part B, and shall be allocated sulfur dioxide allowances under paragraph (f), starting the later of January 1, 2010, or January 1 of the year after approval of the designation;

(2) an affected unit under subpart 2 of part C, and shall be allocated nitrogen oxides allowances under paragraph (f), starting the later of January 1, 2010, or January 1 of the year after approval of the designation; and

(3) if applicable, an affected unit under part D, and shall be allocated mercury allowances, starting the later of January l, 2010, or January 1 of the year after approval of designation.

(f) ALLOCATIONS.—

(1) SULFUR DIOXIDE AND NITROGEN OXIDES.—The Administrator shall promulgate regulations determining the allocations of sulfur dioxide allowances and nitrogen oxides allowances for each year during which a unit is an affected unit under subsection (e). The regulations shall provide for allocations equal to 70 percent of the following amounts beginning January 1, 2010, and 50 percent of the following amounts beginning January 1, 2018 the unit's baseline heat input under subsection (d) multiplied by the lesser of—

(A) the unit's baseline sulfur dioxide emission rate or nitrogen oxides emission rate as the case may be; or

(B) the unit's most stringent State or Federal emission limitation for sulfur dioxide or nitrogen oxides applicable to the year on which the unit's baseline heat input is based under subsection (d).

(2) MERCURY.—The Administrator shall promulgate regulations providing for the allocation of mercury allowances to solid fuel-fired units designated under this section for each year after January 1, 2010 during which a unit is a designated unit under this section. The regulations shall provide for allocations equal to the lesser of the following amounts—

(A) the unit's annual allowable emissions rate for mercury under the national emissions standards for hazardous air pollutants for boilers and process heaters multiplied by the unit's baseline heat input; or

(B) the unit's most stringent State or Federal emission limitation for mercury emissions rate multiplied by the unit's baseline heat input.

(3) LIMITATION.—Allowances allocated to electing units under subparagraphs (1) and (2) shall comprise a separate limitation on emissions from sections 423, 433, 453, 473, or other section of this Act. These allowances

for sulfur dioxide, nitrogen oxides, or mercury, as the case may be, shall be tradeable with allowances allocated under sections 414, 424, 454, 474, as applicable, provided that

(A) electing units may only trade nitrogen oxides within the respective zones established under section 452 within which the electing unit is located, and

(B) affected units within the WRAP States may only purchase sulfur dioxide allowances allocated or otherwise distributed by the Administrator to electing units within the WRAP States, and will not be counted for purposes the affected unit's emissions within the meaning of the WRAP Annex.

(4) INCENTIVES FOR EARLY REDUCTIONS.—The Administrator shall promulgate regulations within 18 months authorizing the allocation of sulfur dioxide, nitrogen oxides and mercury allowances to units designated under this section that install or modify pollution control equipment or combustion technology improvements identified in such regulations after the date of enactment of this section and prior to January 1, 2010. No allowances shall be allocated under this paragraph for emissions reductions attributable to: pollution control equipment or combustion technology improvements that were operational or under construction at any time prior to the date of enactment of this section; fuel switching; or compliance with any Federal regulation. The allowances allocated to any unit under this paragraph shall be in addition to the allowances allocated under paragraphs (1) and (2) and sections 414, 424, 434, 454 and 474 and shall be allocated in an amount equal to one allowance of sulfur dioxide and nitrogen oxides for each 1.05 tons of reduction in emissions of sulfur dioxide and nitrogen oxides, respectively, and 1.05 ounces of reduction in the emissions of mercury achieved by the pollution control equipment or combustion technology improvements starting with the year in which the equipment or improvement is implemented.

(g) WITHDRAWAL.—The Administrator shall promulgate regulations withdrawing from the approved designation under subsection (c) any unit that qualifies as an affected EGU under subpart 2 of part B or subpart 2 of part C, or part D after the approval of the designation of the unit under subsection (c).

(h) REGULATIONS.—The Administrator shall promulgate regulations implementing this section within 18 months of the date of enactment of the Clear Skies Act of 2003.

(i) APPLICATION PERIOD.—Applications for designation of units under this section shall be accepted by the Administrator beginning not later than 180 days after the date of enactment of this section and the Administrator shall approve or disapprove of each application within 90 days of receipt.

(j) NESHAP APPLICABILITY.—

(1) A unit that is designated as an affected unit under this section shall not be subject to any national emissions standards for hazardous air pollutants (NESHAP) promulgated pursuant to section 112(d) after November 10, 2003, except that units that are boilers or process heaters shall be subject on and after January 1, 2010 to the emissions limitation for mercury, and associated monitoring and compliance requirements, that would be applicable to such units under the NESHAP for boilers and process heaters promulgated pursuant to section 112(d).

(2) Not later than 18 months after the date of enactment of this section, the Administrator shall publish and make available for public comment, a peer reviewed preliminary report characterizing the emissions and public health effects that may reasonably be anticipated to occur from the implementation of paragraph (1) and subsection (f). No NESHAP for boilers and process heaters shall be promulgated under section 112(d) until the conclusion of, and considering, this report. Under section 112(n)(1)(A), the Administrator shall publish a final report, including responses to the comments received, not later than 30 months after such date. The requirements of section 112(n)(1)(A), for purposes of this paragraph, shall be amended as follows. The report shall include:

(A) an estimate of the numbers and types of sources that are expected to be designated under this section;

(B) an estimate of any increase or decrease in the annual emissions of criteria pollutants and of those hazardous air pollutants subject to emission limitations under the NESHAPs identified in paragraph (1) from such sources that may reasonably be expected to occur for each year through 2018;

(C) an estimate of any increase or decrease in the annual emissions of criteria pollutants and of those hazardous air pollutants subject to emission limitations under the NESHAPs identified in paragraph (1) from such sources that might reasonably be expected to occur for each year through 2018, if such sources estimated in subparagraph (A) are not designated under this section; and

(D) a description of the public health and environmental impacts associated with the emissions increases and decreases described in subparagraphs (B) and (C).

Notwithstanding paragraph (1), the Administrator shall have the authority to regulate emissions of hazardous air pollutants listed under section 112(b), other than mercury compounds, from sources designated under this section in accordance with the regime set forth in section 112(f)(2). The Administrator shall make a determination based on the study and other information satisfying the criteria of the Data Quality Act whether to establish emissions limitations under section 112(f) for sources designated under this section, not later than 24 months after the final report is published. The determination shall be a final agency action subject to judicial review under section 307 and the Administrative Procedures Act.

(k) OTHER COMBUSTION SOURCES.—The owner or operator of an affected unit designated under this section may elect to designate other combustion sources, such as kilns and furnaces (including sources that are not operated to generate electricity) that are located on the same property as affected units under this section provided that the emissions from such sources are vented through a stack or duct. A source that is designated as an affected unit under this section shall not be subject to any national emissions standards for hazardous air pollutants promulgated pursuant to section 112(d) after August 2003. The Administrator shall have the authority to regulate emissions of hazardous air pollutants listed under section 112(b), other than mercury compounds, by units designated as affected units under this section in accordance with the regime set forth in sections 112(n)(1)(A) and 112(f)(2) through (4). Any such regulation shall not require compliance with emissions limitations for such pollutants before January l, 2018.

(l) EXEMPTION FROM MAJOR SOURCE PRECONSTRUCTION REVIEW REQUIREMENTS AND BEST AVAILABLE RETROFIT CONTROL TECHNOLOGY REQUIREMENTS.—

(1) MAJOR SOURCE EXEMPTION.—A unit designated as an affected unit under this section shall not be considered a major source, or a part of a major emitting facility or major stationary source for purposes of compliance with the requirements of parts C and D of title I. This exemption only applies if, beginning 8 years after the date of enactment of this section, or designation as an affected unit,—

(A) the designated unit either achieves in fact, or is subject to a regulatory requirement to achieve, a limit on the emissions of particulate matter from the affected unit to the level not greater than the level applicable to the unit either pursuant to subpart Db of 40 CFR Part 60 or the national emissions standards for hazardous air pollutants for industrial boilers and process heaters issued pursuant to section 112; or the owner or operator of the affected unit properly operates, maintains and repairs pollution control equipment to limit emissions of particulate matter and

(B) the owner or operator of the designated unit uses good combustion practices to minimize emissions of carbon monoxide.

(2) CLASS I AREA PROTECTIONS.—Notwithstanding the exemption in paragraph (1), an affected unit located within 50 km of a Class I area on which construction commences after the date of enactment of this section is subject to those provisions under part C of title I to the review of a new or modified major stationary source's impact on a Class I area.

(m) LIMITATION.—Any unit designated under this section shall not transfer or bank allowances produced as a result of reduced utilization or shutdown. In no case may the Administrator allocate to a source designated under this section allowances in an amount greater than the emissions resulting from operation of the source in full compliance with the requirements of this Act. No such allowances shall authorize operation of a unit in violation of any other requirements of this Act.

SEC. 408. CLEAN COAL TECHNOLOGY REGULATORY INCENTIVES.

(a) DEFINITION.—For purposes of this section, ''clean coal technology'' means any technology, including technologies applied at the precombustion, combustion, or post combustion stage, at a new or existing facility which will achieve significant reductions in air emissions of sulfur dioxide or oxides of nitrogen associated with the utilization of coal in the generation of electricity, process steam, or industrial products, which is not in widespread use as of November 15, 1990.

(b) REVISED REGULATIONS FOR CLEAN COAL TECHNOLOGY DEMONSTRATIONS.—

(1) APPLICABILITY.—This subsection applies to physical or operational changes to existing facilities for the sole purpose of installation, operation, cessation, or removal of a temporary or permanent clean coal technology demonstration project. For the purposes of this section, a clean coal technology demonstration project shall mean a project using funds appropriated under the heading ''Department of Energy—Clean Coal Technology'', up to a total amount of $2,500,000,000 for commercial demonstration of clean coal technology, or similar projects funded through appropriations for the Environmental Protection Agency. The Federal contribution for qualifying project shall be at least twenty percent of the total cost of the demonstration project.

(2) TEMPORARY PROJECTS.—Installation, operation, cessation, or removal of a temporary clean coal technology demonstration project that is operated for a period of 5 years or less, and which complies with the State implementation plans for the State in which the project is located and other requirements necessary to attain and maintain the national ambient air quality standards during and after the project is terminated, shall not subject such facility to the requirements of section 111 or part C or D of title I.

(3) PERMANENT PROJECTS.—For permanent clean coal technology demonstration projects that constitute repowering as defined in section 411, any qualifying project shall not be subject to standards of performance under section 111 or to the review and

permitting requirements of part C for any pollutant the potential emissions of which will not increase as a result of the demonstration project.

(4) EPA REGULATIONS.—Not later than twelve months after November 15, 1990, the Administrator shall promulgate regulations or interpretive rulings to revise requirements under section 111 and parts C and D, as appropriate, to facilitate projects consistent in this subsection. With respect to parts C and D, such regulations or rulings shall apply to all areas in which EPA is the permitting authority. In those instances in which the State is the permitting authority under part C or D, any State may adopt and submit to the Administrator for approval revisions to its implementation plan to apply the regulations or rulings promulgated under this subsection.

(c) EXEMPTION FOR REACTIVATION OF VERY CLEAN UNITS.—Physical changes or changes in the method of operation associated with the commencement of commercial operations by a coal-fired utility unit after a period of discontinued operation shall not subject the unit to the requirements of section 111 or part C of the Act where the unit—

(1) has not been in operation for the two-year period prior to November 15, 1990, and the emissions from such unit continue to be carried in the permitting authority's emissions inventory on November 15, 1990,

(2) was equipped prior to shut-down with a continuous system of emissions control that achieves a removal efficiency for sulfur dioxide of no less than 85 percent and a removal efficiency for particulates of no less than 98 percent,

(3) is equipped with low-NO_x burners prior to the time of commencement, and

(4) is otherwise in compliance with the requirements of this Act.

SEC. 409. ELECTRICITY RELIABILITY.

(a) RELIABILITY.—

(1) APPLICABILITY.—At any time prior the applicability of this Act under sections 422, 432, 454, and 474, in order to ensure the reliability of an electric utility company or system, including a system cooperatively or municipally owned, for a specified geographic area or service territory, as determined by the Department of Energy in consultation with the Administrator, during the installation of sulfur dioxide pollution control technology or scrubbers, nitrogen oxides, mercury or particulate matter control technology, or any combination thereof, the owner or operator of an affected unit may meet the requirements of sections 422, 434, 454, 474 by means of the compliance procedures of this subsection (a).

(2) PETITION.—The owner or operator of an affected unit that believes it may experience an adverse impact on the reliability of the company or system as a result, in substantial part, of the need to construct sulfur dioxide pollution control equipment or scrubbers, nitrogen oxides, mercury or particulate matter control technology, or any combination thereof, may petition the Secretary of Energy, in consultation with the Administrator, for a determination that, to a reasonable degree of certainty, reliability will likely be threatened. Upon such a determination, the owner or operator may elect to adopt a compliance method meeting the requirements of this subsection.

A. Within 12 months of enactment the Secretary of Energy shall promulgate regulations describing the requirements for a petition and the petition process, which will include notice and public comment. The Secretary of Energy, in consultation with the Administrator, shall make a final determination on a petition within 180 days of the submittal of a reasonably complete petition. Failure to act within the 180-day period will extend the applicability by 12 months for all units subject to the petition.

B. The petition must contain,

(i) a description of each affected unit, the estimated outage time and a construction schedule;

(ii) an estimate of demand from date of applicability until 2018;

(iii) the impacts on reliability associated with constructing all of the pollution control projects, including those for sulfur dioxide, nitrogen oxides, mercury, or particulate matter, by the respective deadlines; and

(iv) how the proposed compliance schedule would alleviate detrimental impacts.

C. If the Secretary of Energy fails to promulgate final regulations or such regulations are not effective for any reason, within the prescribed time, petitions containing reasonably sufficient information for a final determination may be submitted to the Secretary of Energy and will be deemed complete.

(3) FINAL DETERMINATION.—In making a final determination the Secretary of Energy, in consultation with the Administrator, shall consider the following factors, provided that not all factors need be present to make a determination that, to a reasonable degree, reliability will be threatened:

(A) The ability of vendors to supply scrubbers; scrubber system equipment, materials and scrubber affected balance of plant equipment including, but not limited to, fans, pumps, electric motors, motor drives, dampers, electrical power supply equipment; at fair prices with meaningful guarantees or warranties as to availability, delivery dates and meeting contracted pollution control reduction requirements or emissions limitations; with similar considerations for nitrogen oxides, mercury or particulate matter control technology, or any combination thereof;

(B) The availability and limitations of key sulfur dioxide, nitrogen oxides or mercury controls design resources and North American construction resources. The design resources shall include but not be limited to Architect Engineering companies experienced in the design of sulfur dioxide, nitrogen oxides, mercury or particulate matter control technology. The construction resources shall include but not be limited to construction companies with experience in the construction of sulfur dioxide, nitrogen oxides, mercury, or particulate matter control technology and trained and experienced labor resources including but not limited to boilermakers, iron workers, electricians, mechanics;

(C) The feasibility to complete the construction of all pollution control technology projects by the relevant applicability compliance deadline;

(D) The impact in terms of unit outages and construction schedules on a company or systems reliability and whether such impact is unreasonable;

(i) Unreasonable shall be presumed to be an increase in the price of purchase power of (10) percent over the estimated cost in cents per kilowatt for the company, system or state, utilized in the latest submissions to a relevant state or federal agency; or

(ii) A projected reduction in available generating capacity such that adequate reserve margins for a company, system or state do not exist, as determined by the Secretary of Energy in coordination with the relevant federal or state utility agency or reliability council; or

(iii) A supply shortage of coal needed to meet emissions control expectations for any proposed emissions control device.

(E) An company or system which submits a petition to install sulfur dioxide, nitrogen oxides, mercury, or particulate matter control technology, or any combination thereof, on affected units equaling twenty-five percent or more of its coal-fired capacity shall be presumed to meet the requirements of a positive determination from the Secretary of Energy.

(4) COMPLIANCE.—Upon a positive determination by the Secretary of Energy in accordance with the paragraph (3), such affected units will be granted a one year extension from the relevant applicability date under this title.

(b) During any year covered by this title, an affected unit may submit a petition in accordance with paragraph (a)(2) to allow use of sulfur dioxide allowances, nitrogen oxides allowances, and mercury allowances, as the case may be, allocated for the immediate next year to meet the applicable requirement to hold such allowances equal to the petitioned year's emissions.

(c) PRESIDENTIAL WAIVER.—Notwithstanding subsection (a) or any other provision of this Act, The President of the United States shall have authority to temporarily grant waivers from emission limitations under sections 412, 422, 432, 452, and 472, as the case may be, if the President determines that the reliability of any portion of national electricity supply or national security is imperiled.

PART B—SULFUR DIOXIDE EMISSION REDUCTIONS

Subpart 1—Acid Rain Program

SEC. 411. DEFINITIONS.

For purposes of this subpart and subpart 1 of part B:

(1) The term ''actual 1985 emission rate'', for electric utility units means the annual sulfur dioxide or nitrogen oxides emission rate in pounds per million Btu as reported in the 1985 National Acid Precipitation Assessment Program (NAPAP) Emissions Inventory, Version 2, National Utility Reference File (NURF). For nonutility units, the term ''actual 1985 emission rate'' means the annual sulfur dioxide or nitrogen oxides emission rate in pounds per million Btu as reported in the NAPAP Emission Inventory, Version 2.

(2) The term ''allowable 1985 emissions rate'' means a federally enforceable emissions limitation for sulfur dioxide or oxides of nitrogen, applicable to the unit in 1985 or the limitation applicable in such other subsequent year as determined by the Administrator if such a limitation for 1985 does not exist. Where the emissions limitation for a unit is not expressed in pounds of emissions per million Btu, or the averaging period of that emissions limitation is not expressed on an annual basis, the Administrator shall calculate the annual equivalent of that emissions limitation.

(3) The term ''alternative method of compliance'' means a method of compliance in accordance with one or more of the following authorities—

(A) a substitution plan submitted and approved in accordance with subsections 413(b) and (c); or

(B) a Phase I extension plan approved by the Administrator under section 413(d), using qualifying phase I technology as determined by the Administrator in accordance with that section.

(4) The term ''baseline'' means the annual quantity of fossil fuel consumed by an affected unit, measured in millions of British Thermal Units (''mmBtu's''), calculated as follows:

(A) For each utility unit that was in commercial operation prior to January 1, 1985, the baseline shall be the annual average quantity of mmBtu's consumed in fuel during calendar years 1985, 1986, and 1987, as recorded by the Department of Energy pursuant to Form 767. For any utility unit for

which such form was not filed, the baseline shall be the level specified for such unit in the 1985 (NAPAP) Emissions Inventory, Version 2, (NURF) or in a corrected data base as established by the Administrator pursuant to paragraph (3). For nonutility units, the baseline in the NAPAP Emissions Inventory, Version 2. The Administrator, in the Administrator's sole discretion, may exclude periods during which a unit is shutdown for a continuous period of 4 calendar months or longer, and make appropriate adjustments under this paragraph. Upon petition of the owner or operator of any unit, the Administrator may make appropriate baseline adjustments for accidents, strikes, disruptions of fuel supplies, failure of equipment, other causes beyond the reasonable control of the owner or operator of the unit that caused prolonged outages.

(B) For any other nonutility unit that is not included in the NAPAP Emissions Inventory, Version 2, or a corrected data base as established by the Administrator pursuant to paragraph (3), the baseline shall be the annual average quantity, in mmBtu consumed in fuel by that unit, as calculated pursuant to a method which the Administrator shall prescribe by regulation to be promulgated not later than 18 months after November 15, 1990.

(C) The Administrator shall, upon application or on his own motion, by December 31, 1991, supplement data needed in support of this subpart and correct any factual errors in data from which affected Phase II units' baselines or actual 1985 emission rates have been calculated. Corrected data shall be used for purposes of issuing allowances under this subpart. Such corrections shall not be subject to judicial review, nor shall the failure of the Administrator to correct an alleged factual error in such reports be subject to judicial review.

(5) The term ''basic Phase II allowance allocations'' means:

(A) For calendar years 2000 through 2009 inclusive, allocations of allowances made by the Administrator pursuant to section 412 and subsections (b)(1), (3), and (4); (c)(1), (2), (3), and (5); (d)(1), (2), (4), and (5); (e); (f); (g)(1), (2), (3), (4), and (5); (h)(1); (i) and (j) of section 414.

(B) For each calendar year beginning in 2010, allocations of allowances made by the Administrator pursuant to section 412 and subsections (b)(1), (3), and (4); (c)(1), (2), (3), and (5); (d)(1), (2), (4) and (5); (e); (f); (g)(1), (2), (3), (4), and (5); (h)(1) and (3); (i) and (j) of section 414.

(6) The term ''capacity factor'' means the ratio between the actual electric output from a unit and the potential electric output from that unit.

(7) The term ''commenced'' as applied to construction of any new electric utility unit means that an owner or operator has undertaken a continuous program of construction or that an owner or operator has entered into a contractual obligation to undertake and complete, within a reasonable time, a continuous program of construction.

(8) The term ''commenced commercial operation'' with regard to a unit means the start up of the unit's combustion chamber and commencement of the generation of electricity for sale.

(9) The term ''construction'' means fabrication, erection, or installation of an affected unit.

(10) The term ''existing unit'' means a unit (including units subject to section 111) that commenced commercial operation before November 15, 1990. Any unit that commenced commercial operation before November 15, 1990 which is modified, reconstructed, or repowered after November 15, 1990 shall continue to be an existing unit for the purposes of this subpart. For the purposes of this subpart, existing units shall not include simple combustion turbines, or units which serve a generator with a nameplate capacity of 25 MWe or less.

(11) The term ''independent power producer'' means any person who owns or operates, in whole or in part, one or more new independent power production facilities.

(12) The term ''new independent power production facility'' means a facility that—

(A) is used for the generation of electric energy, 80 percent or more of which is sold at wholesale;

(B) in nonrecourse project-financed (as such term is defined by the Secretary of Energy within 3 months of the date of the enactment of the Clean Air Act Amendments of 1990); and

(C) is a new unit required to hold allowances under this subpart.

(13) The term ''industrial source'' means a unit that does not serve a generator that produces electricity, a ''nonutility unit'' as defined in this section, or a process source.

(14) The term ''life-of-the-unit, firm power contractual arrangement'' means a unit participation power sales agreement under which a utility or industrial customer reserves, or is entitled to receive, a specified amount or percentage of capacity and associated energy generated by a specified generating unit (or units) and pays its proportional amount of such unit's total costs, pursuant to a contract either—

(A) for the life of the unit;

(B) for a cumulative term of no less than 30 years, including contracts that permit an election for early termination; or

(C) for a period equal to or greater than 25 years or 70 percent of the economic useful life of the unit determined as of the time the unit was built, with option rights to purchase or release some portion of the capacity and associated energy generated by the unit (or units) at the end of the period.

(15) The term ''new unit'' means a unit that commences commercial operation on or after November 15, 1990.

(16) The term ''nonutility unit'' means a unit other than a utility unit.

(17) The term ''Phase II bonus allowance allocations'' means, for calendar year 2000 through 2009, inclusive, and only for such years, allocations made by the Administrator pursuant to section 412, subsections (a)(2), (b)(2), (c)(4), (d)(3) (except as otherwise provided therein), and (h)(2) of section 414, and section 415.

(18) The term ''qualifying phase I technology'' means a technological system of continuous emission reduction which achieves a 90 percent reduction in emissions of sulfur dioxide from the emissions that would have resulted from the use of fuels which were not subject to treatment prior to combustion.

(19) The term ''repowering'' means replacement of an existing coal-fired boiler with one of the following clean coal technologies: atmospheric or pressurized fluidized bed combustion, integrated gasification combined cycle, magneto-hydrodynamics, direct and indirect coal-fired turbines, integrated gasification fuel cells, or as determined by the Administrator, in consultation with the Secretary of Energy, a derivative of one or more of these technologies, and any other technology capable of controlling multiple combustion emissions simultaneously with improved boiler or generation efficiency and with significantly greater waste reduction relative to the performance of technology in widespread commercial use as of November 15, 1990.

(20) The term ''reserve'' means any bank of allowances established by the Administrator under this subpart.

(21)(A) The term ''utility unit'' means—

(i) a unit that serves a generator located in any State and that produces electricity for sale, or

(ii) a unit that, during 1985, served a generator located in any State and that produced electricity for sale.

(B) Notwithstanding subparagraph (A), a unit described in subparagraph (A) that—

(i) was in commercial operation during 1985, but

(ii) did not during 1985, serve a generator in any State that produced electricity for sale shall not be a utility unit for purposes of this subpart.

(C) A unit that cogenerates steam and electricity is not a ''utility unit'' for purposes of this subpart unless the unit is constructed for the purpose of supplying, or commences construction after November 15, 1990 and supplies more than one-third of its potential electric output capacity of more than 25 megawatts electrical output to any utility power distribution system for sale.

SEC. 412. ALLOWANCE ALLOCATION.

(a) Except as provided in sections 414(a)(2), 415(a)(3), and 416, beginning January 1, 2000, the Administrator shall not allocate annual emission allowances for sulfur dioxide from utility units in excess of 8.90 million tons except that the Administrator shall not take into account unused allowances carried forward by owners and operators of affected units or by other persons holding such allowances, following the year for which they were allocated. If necessary to meeting the restrictions imposed in the preceding sentence, the Administrator shall reduce, pro rata, the basic Phase II allowance allocations for each unit subject to the requirements of section 414. Subject to the provisions of section 417, the Administrator shall allocate allowances for each affected until at an affected source annually, as provided in paragraphs (2) and (3) and section 404. Except as provided in sections 416, the removal of an existing affected unit or source from commercial operation at any time after November 15, 1990 (whether before or after January 1, 1995, or January 1, 2000), shall not terminate or otherwise affect the allocation of allowances pursuant to section 413 or 414 to which the unit is entitled. Prior to June 1, 1998, the Administrator shall publish a revised final statement of allowance allocations, subject to the provisions of section 414(a)(2).

(b) NEW UTILITY UNITS.—

(1) After January 1, 2000 and through December 31, 2007, it shall be unlawful for a new utility unit to emit an annual tonnage of sulfur dioxide in excess of the number of allowances to emit held for the unit by the unit's owner or operator.

(2) Starting January 1, 2008, a new utility unit shall be subject to the prohibition in subsection (c)(3).

(3) New utility units shall not be eligible for an allocation of sulfur dioxide allowances under subsection (a)(1), unless the unit is subject to the provisions of subsection (g)(2) or (3) of section 414. New utility units may obtain allowances from any person, in accordance with this title. The owner or operator of any new utility unit in violation of subsection (b)(1) or subsection(c)(3) shall be liable for fulfilling the obligations specified in section 406.

(c) PROHIBITIONS.—

(1) It shall be unlawful for any person to hold, use, or transfer any allowance allocated under this subpart, except in accordance with regulations promulgated by the Administrator.

(2) For any year 1995 through 2007, it shall be unlawful for any affected unit to emit sulfur dioxide in excess of the number of allowances held for that unit for that year by the owner or operator of the unit.

(3) Starting January 1, 2008, it shall be unlawful for the affected units at a source to emit a total amount of sulfur dioxide during the year in excess of the number of allowances held for the source for that year by the owner or operator of the source.

(4) Upon the allocation of allowances under this subpart, the prohibition in paragraphs (2) and (3) shall supersede any other emission limitation applicable under this subpart to the units for which such allowances are allocated.

(d) In order to ensure electricity reliability, regulations establishing a system for issuing, recording, and tracking allowances under section 403(b) and this subpart shall not prohibit or affect temporary increases and decreases in emissions within utility systems, power pools, or utilities entering into allowance pool agreements, that result from their operations, including emergencies and central dispatch, and such temporary emissions increases and decreases shall not require transfer of allowances among units nor shall it require recording. The owners or operators of such units shall act through a designated representative. Notwithstanding the preceding sentence, the total tonnage of emissions in any calendar year (calculated at the end thereof) from all units in such a utility system, power pool, or allowance pool agreements shall not exceed the total allowances for such units for the calendar year concerned, including for calendar years after 2007, allowances held for such units by the owner or operator of the sources where the units are located.

(e) Where there are multiple holders of a legal or equitable title to, or a leasehold interest in, an affected unit, or where a utility or industrial customer purchases power from an affected unit (or units) under life-of-the-unit, firm power contractual arrangements, the certificate of representation required under section 404(f) shall state—

(1) that allowances under this subpart and the proceeds of transactions involving such allowances will be deemed to be held or distributed in proportion to each holder's legal, equitable, leasehold, or contractual reservation or entitlement, or

(2) if such multiple holders have expressly provided for a different distribution of allowances by contract, that allowances under this subpart and the proceeds of transactions involving such allowances will be deemed to be held or distributed in accordance with the contract.

A passive lessor, or a person who has an equitable interest through such lessor, whose rental payments are not based, either directly or indirectly, upon the revenues or income from the affected unit shall not be deemed to be a holder of a legal, equitable, leasehold, or contractual interest for the purpose of holding or distributing allowances as provided in this subsection, during either the term of such leasehold or thereafter, unless expressly provided for in the leasehold agreement. Except as otherwise provided in this subsection, where all legal or equitable title to or interest in an affected unit is held by a single person, the certification shall state that all allowances under this subpart received by the unit are deemed to be held for that person.

SEC. 413. PHASE I SULFUR DIOXIDE REQUIREMENTS.

(a) EMISSION LIMITATIONS.—

(1) After January 1, 1995, each source that includes one or more affected units listed in table A is an affected source under this section. After January 1, 1995, it shall be unlawful for any affected unit (other than an eligible phase I unit under section 413(d)(2)) to emit sulfur dioxide in excess of the tonnage limitation stated as a total number of allowances in table A for phase 1, unless—

(A) the emissions reduction requirements applicable to such unit have been achieved pursuant to subsection (b) or (d), or

(B) the owner or operator of such unit holds allowances to emit not less than the unit's total annual emissions, except that, after January 1, 2000, the emissions limitations established in this section shall be superseded by those established in section 414. The owner or operator of any unit in violation of this section be fully liable for such violation including, but not limited to, liability for fulfilling the obligations specified in section 406.

(2) Not later than December 31, 1991, the Administrator shall determine the total tonnage of reductions in the emissions of sulfur dioxide from all utility units in calendar year 1995 that will occur as a result of compliance with the emissions limitation requirements of this section, and shall establish a reserve of allowances equal in amount to the number of tons determined thereby not to exceed a total of 3.50 million tons. In making such a determination, the Administrator shall compute for each unit subject to the emissions limitation requirements of this section the difference between—

(A) the product of its baseline multiplied by the lesser of each unit's allowable 1985 emissions rate and its actual 1985 emissions rate, divided by 2,000, and

(B) the product of each unit's baseline multiplied by 2.50 lbs/mmBtu divided by 2,000, and sum the computations. The Administrator shall adjust the foregoing calculation to reflect projected calendar year 1995 utilization of the units subject to the emissions limitations of this subpart that the Administrator finds would have occurred in the absence of the imposition of such requirements. Pursuant to subsection (d), the Administrator shall allocate allowances from the reserve established hereunder until the earlier of such time as all such allowances in the reserve are allocated or December 31, 1999.

(3) In addition to allowances allocated pursuant to paragraph (1), in each calendar year beginning in 1995 and ending in 1999, inclusive, the Administrator shall allocate for each unit on Table A that is located in the States of Illinois, Indiana, or Ohio (other than units at Kyger Creek, Clifty Creek and Joppa Steam), allowances in an amount equal to 200,000 multiplied by the unit's pro rata share of the total number of allowances allocated for all units on Table A in the 3 States (other than units at Kyger Creek, Clifty Creek, and Joppa Steam) pursuant to paragraph (1). Such allowances shall be excluded from the calculation of the reserve under paragraph (2).

(b) SUBSTITUTIONS.—The owner or operator of an affected unit under subsection (a) may include in its section 404 permit application and proposed compliance plan a proposal to reassign, in whole or in part, the affected unit's sulfur dioxide reduction requirements to any other unit(s) under the control of such owner or operator. Such proposal shall specify—

(1) the designation of the substitute unit or units to which any part of the reduction obligations of subsection (a) shall be required, in addition to, or in lieu of, any original affected units designated under such subsection;

(2) the original affected unit's baseline, the actual and allowable 1985 emissions rate for sulfur dioxide, and the authorized annual allowance allocation stated in table A;

(3) calculation of the annual average tonnage for calendar years 1985, 1986, and 1987, emitted by the substitute unit or units, based on the baseline for each unit, as defined in section 411(4), multiplied by the lesser of the unit's actual or allowable 1985 emissions rate;

(4) the emissions rates and tonnage limitations that would be applicable to the original and substitute affected units under the substitution proposal;

(5) documentation, to the satisfaction of the Administrator, that the reassigned tonnage limits will, in total, achieve the same or greater emissions reduction than would have been achieved by the original affected unit and the substitute unit or units without such substitution; and

(6) such other information as the Administrator may require.

(c) ADMINISTRATOR'S ACTION ON SUBSTITUTION PROPOSALS.—

(1) The Administrator shall take final action on such substitution proposal in accordance with section 404(c) if the substitution proposal fulfills the requirements of this subsection. The Administrator may approve a substitution proposal in whole or in part and with such modifications or conditions as maybe consistent with the orderly functioning of the allowance system and which will ensure the emissions reductions contemplated by this title. If a proposal does not meet the requirements of subsection (b), the Administrator shall disapprove it. The owner or operator of a unit listed in table A shall not substitute another unit or units without the prior approval of the Administrator.

(2) Upon approval of a substitution proposal, each substitute unit, and each source with such unit, shall be deemed affected under this title, and the Administrator shall issue a permit to the original and substitute affected source and unit in accordance with the approved substitution plan and section 404. The Administrator shall allocate allowances for the original and substitute affected units in accordance with the approved substitution proposal pursuant to section 412. It shall be unlawful for any source or unit that is allocated allowances pursuant to this section to emit sulfur dioxide in excess of the emissions limitation provided for in the approved substitution permit and plan unless the owner or operator of each unit governed by the permit and approved substitution plan holds allowances to emit not less than the unit's total annual emissions. The owner or operator of any original or substitute affected unit operated in violation of this subsection shall be fully liable for such violation, including liability for fulfilling the obligations specified in section 406. If a substitution proposal is disapproved, the Administrator shall allocate allowances to the original affected unit or units in accordance with subsection (a).

(d) ELIGIBLE PHASE I EXTENSION UNITS.—

(1) The owner or operator of any affected unit subject to an emissions limitation requirement under this section may petition the Administrator in its permit application under section 404 for an extension of 2 years of the deadline for meeting such requirement, provided that the owner or operator of any such unit holds allowances to emit not less than the unit's total annual emissions for each of the 2 years of the period of extension. To qualify for such an extension, the affected unit must either employ a qualifying phase I technology, or transfer its phase I emissions reduction obligation to a unit employing a qualifying phase I technology. Such transfer shall be accomplished in accordance with a compliance plan, submitted and approved under section 404, that shall govern operations at all units included in the transfer, and that specifies the emissions reduction requirements imposed pursuant to this title.

(2) Such extension proposal shall—

(A) specify the unit or units proposed for designation as an eligible phase I extension unit;

(B) provide a copy of an executed contract, which may be contingent upon the Administrator approving the proposal, for the design engineering, and construction of the qualifying phase I technology for the extension unit, or for the unit or units to which the extension unit's emission reduction obligation is to be transferred;

(C) specify the unit's or units' baselines, actual 1985 emissions rates, allowable 1985 emissions rates, and projected utilizations for calendar years 1995 through 1999;

(D) require CEMS on both the eligible phase I extension unit or units and the transfer unit or units beginning no later than January 1, 1995; and

(E) specify the emission limitation and number of allowances expected to be necessary for annual operation after the qualifying phase I technology has been installed.

(3) The Administrator shall review and take final action on each extension proposal in Page order of receipt, consistent with section 404, and for an approved proposal shall designate the unit or units as an eligible phase I extension unit. The Administrator may approve an extension proposal in whole or in part, and with such modifications or conditions as may be necessary, consistent with the orderly functioning of the allowance system, and to ensure the emissions reductions contemplated by the subpart.

(4) In order to determine the number of proposals eligible for allocations from the reserve under subsection (a)(2) and the number of the allowances remaining available after each proposal is acted upon, the Administrator shall reduce the total number of allowances remaining available in the reserve by the number of allowances calculated according to subparagraph (A), (B) and (C) until either no allowances remain available in the reserve for further allocation or all approved proposals have been acted upon. If no allowances remain available in the reserve for further allocation before all proposals have been acted upon by the Administrator, any pending proposals shall be disapproved. The Administrator shall calculate allowances equal to—

(A) the difference between the lesser of the average annual emissions in calendar years 1988 and 1989 or the projected emissions tonnage for calendar year 1995 of each eligible phase I extension unit, as designated under paragraph (3), and the product of the unit's baseline multiplied by an emission rate of 2.50 lbs/mmBtu, divided by 2,000;

(B) the difference between the lesser of the average annual emissions in calendar years 1988 and 1989 or the projected emissions tonnage for calendar year 1996 of each eligible phase I extension unit, as designated under paragraph (3), and the product of the unit's baseline multiplied by an emission rate of 2.501bs/mmBtu, divided by 2,000; and

(C) the amount by which (i) the product of each unit's baseline multiplied by an emission rate of 1.20 lbs/mmBtu, divided by 2,000, exceeds (ii) the tonnage level specified under subparagraph (E) of paragraph (2) of this subsection multiplied by a factor of 3.

(5) Each eligible Phase I extension unit shall receive allowances determined under subsection (a)(1) or (c) of this section. In addition, for calendar year 1995, the Administrator shall allocate to each eligible Phase I extension unit, from the allowance reserve created pursuant to subsection (a)(2), allowances equal to the difference between the lesser of the average annual emissions in calendar years 1988 and 1989 or its projected emission tonnage for calendar year 1995 and the product of the unit's baseline multiplied by an emission rate of 2.50 lbs/mmBtu, divided by 2,000. In calendar year 1996, the Administrator shall allocate for each eligible unit, from the allowance reserve created pursuant to subsection (a)(2), allowances equal to the difference between the lesser of the average annual emissions in calendar years 1988 and 1989 or its projected emissions tonnage for calendar year 1996 and the product of the unit's baseline multiplied by an emission rate of 2.50 lbs/mmBtu, divided by 2,000. It shall be unlawful for any source or unit subject to an approved extension plan under this subsection to emit sulfur dioxide in excess of the emissions limitations provided for in the permit and approved extension plan, unless the owner or operator of each unit governed by the permit and approved plan holds allowances to emit not less than the unit's total annual emissions.

(6) In addition to allowances specified in paragraph (4), the Administrator shall allocate for each eligible Phase I extension unit employing qualifying Phase I technology, for calendar years 1997, 1998, and 1999, additional allowances, from any remaining allowances in the reserve created pursuant to subsection (a)(2), following the reduction in the reserve provided for in paragraph (4), not to exceed the amount by which (A) the product of each eligible unit's baseline times an emission rate of 1.20 lbs/mmBtu, divided by 2,000 exceeds (B) the tonnage level specified under subparagraph (E) of paragraph (2) of this subsection.

(7) After January 1, 1997, in addition to any liability under this Act, including under section 406, if any eligible phase I extension unit employing qualifying phase I technology or any transfer unit under this subsection emits sulfur dioxide in excess of the annual tonnage limitation specified in the extension plan, as approved in paragraph (2) of this subsection, the Administrator shall, in the calendar year following such excess, deduct allowances equal to the amount of such excess from such unit's annual allowance allocation.

(e) EARLY REDUCTIONS.—

(1) In the case of a unit that receives authorization from the Governor of the State in which such unit is located to make reductions in the emissions of sulfur dioxide prior to calendar year 1995 and that is part of a utility system that meets the following requirements—

(A) the total coal-fired generation within the utility system as a percentage of total system generation decreased by more than 20 percent between January 1, 1980, and December 31, 1985; and

(B) the weighted capacity factor of all coal-fired units within the utility system averaged over the period from January 1, 1985, through December 31, 1987, was below 50 percent, the Administrator shall allocate allowances under this paragraph for the unit pursuant to this subsection. The Administrator shall allocate allowances for a unit that is an affected unit pursuant to section 414 (but is not also an affected unit under this section) and part of a utility system that includes 1 or more affected units under section 414 for reductions in the emissions of sulfur dioxide made during the period 1995–1999 if the unit meets the requirements of this subsection and the requirements of the preceding sentence, except that for the purposes of applying this subsection to any such unit, the prior year concerned as specified below, shall be any year after January 1, 1995 but prior to January 1, 2000.

(2) In the case of an affected unit under this section described in subparagraph (A), the allowances allocated under this subsection for early reductions in any prior year may not exceed the amount which (A) the product of the unit's baseline multiplied by the unit's 1985 actual sulfur dioxide emission rate (in lbs. per mmBtu), divided by 2,000 exceeds (B) the allowances specified for such unit in Table A. In the case of an affected unit under section 414, the allowances awarded under this subsection for early reductions in any prior year may not exceed the amount by which

(A) the product of

(i) the quantity of fossil fuel consumed by the unit (in mmBtu) in the prior year multiplied by—

(ii) the lesser of

(I) 2.50 or

(II) the most stringent emission rate (in lbs. per mmBtu) applicable to the unit under the applicable implementation plan, divided by 2,000 exceeds

(B) the unit's actual tonnage of sulfur dioxide emission for the prior year concerned.

Allowances allocated under this subsection for units may be allocated only for emission reductions achieved as a result of physical changes or changes in the method of operation made after November 15, 1990, including changes in the type or quantity of fossil fuel consumed.

(3) In no event shall the provisions of this paragraph be interpreted as an event of force majeure or a commercial impracticability or in any other way as a basis for excused nonperformance by a utility system under a coal sales contract in effect before November 15, 1990.

TABLE A—AFFECTED SOURCES AND UNITS IN PHASE I AND THEIR SULFUR DIOXIDE ALLOWANCES (TONS)

State	Plant name	Generator	Phase I allowances
Alabama	Colbert	1	13,570
		2	15,310
		3	15,400
		4	15,410
		5	37,180
	E.C. Gaston	1	18,100
		2	18,540
		3	18,310
		4	19,280
		5	59,840
Florida	Big Bend	1	28,410
		2	27,100
		3	26,740
	Crist	6	19,200
		7	31,680
Georgia	Bowen	1	56,320

TABLE A—AFFECTED SOURCES AND UNITS IN PHASE I AND THEIR SULFUR DIOXIDE ALLOWANCES (TONS)—Continued

State	Plant name	Generator	Phase I allowances
		2	54,770
		3	71,750
		4	71,740
	Hammond	1	8,780
		2	9,220
		3	8,910
		4	37,640
	J. McDonough	1	19,910
		2	20,600
	Wansley	1	70,770
		2	65,430
	Yates	1	7,210
		2	7,040
		3	6,950
		4	8,910
		5	9,410
		6	24,760
		7	21,480
Illinois	Baldwin	1	42,010
		2	44,420
		3	42,550
	Coffeen	1	11,790
		2	35,670
	Grand Tower	4	5,910
	Hennepin	2	18,410
	Joppa Steam	1	12,590
		2	10,770
		3	12,270
		4	11,360
		5	11,420
		6	10,620
	Kincaid	1	31,530
		2	33,810
	Meredosia	3	13,890
	Vermilion	2	8,880
Indiana	Bailly	7	11,180
		8	15,630
	Breed	1	18,500
	Cayuga	1	33,370
		2	34,130
	Clifty Creek	1	20,150
		2	19,810
		3	20,410
		4	20,080
		5	19,360
		6	20,380
	E.W. Stout	5	3,880
		6	4,770
		7	23,610
	F.B. Culley	2	4,290
		3	16,970
	F.E. Ratts	1	8,330
		2	8,480
	Gibson	1	40,400
		2	41,010
		3	41,080
		4	40,320
	H.T. Pritchard	6	5,770
	Michigan City	12	23,310
	Petersburg	1	16,430
		2	32,380
	R. Gallagher	1	6,490
		2	7,280
		3	6,530
		4	7,650
	Tanners Creek	4	24,820
	Wabash River	1	4,000
		2	2,860
		3	3,750
		5	3,670
		6	12,280
	Warrick	4	26,980
Iowa	Burlington	1	10,710
	Des Moines	7	2,320
	George Neal	1	1,290
	M.L. Kapp	2	13,800
	Prairie Creek	4	8,180
	Riverside	5	3,990
Kansas	Quindaro	2	4,220
Kentucky	Coleman	1	11,250
		2	12,840
		3	12,340
	Cooper	1	7,450
		2	15,320
	E.W. Brown	1	7,110
		2	10,910
		3	26,100
	Elmer Smith	1	6,520
		2	14,410
	Ghent	1	28,410
	Green River	4	7,820
	H.L. Spurlock	1	22,780
	Henderson II	1	13,340
		2	12,310
	Paradise	3	59,170
	Shawnee	10	10,170
Maryland	Chalk Point	1	21,910
		2	24,330
	C.P. Crane	1	10,330
		2	9,230
	Morgantown	1	35,260
		2	38,480
Michigan	J.H. Campbell	1	19,280
		2	23,060
Minnesota	High Bridge	6	4,270
Mississippi	Jack Watson	4	17,910
		5	36,700
Missouri	Asbury	1	16,190

TABLE A—AFFECTED SOURCES AND UNITS IN PHASE I AND THEIR SULFUR DIOXIDE ALLOWANCES (TONS)—Continued

State	Plant name	Generator	Phase I allowances
	James River	5	4,850
	Labadie	1	40,110
		2	37,710
		3	40,310
		4	35,940
	Montrose	1	7,390
		2	8,200
		3	10,090
	New Madrid	1	28,240
		2	32,480
	Sibley	3	15,580
	Sioux	1	22,570
		2	23,690
	Thomas Hill	1	10,250
		2	19,390
New Hampshire	Merrimack	1	10,190
		2	22,000
New Jersey	B.L. England	1	9,060
		2	11,720
New York	Dunkirk	3	12,600
		4	14,060
	Greenidge	4	7,540
	Milliken	1	11,170
		2	12,410
	Northport	1	19,810
		2	24,110
		3	26,480
	Port Jefferson	3	10,470
		4	12,330
Ohio	Ashtabula	5	16,740
	Avon Lake	8	11,650
		9	30,480
	Cardinal	1	34,270
		2	38,320
	Conesville	1	4,210
		2	4,890
		3	5,500
		4	48,770
	Eastlake	1	7,800
		2	8,640
		3	10,020
		4	14,510
		5	34,070
	Edgewater	4	5.050
	Gen. J.M. Gavin	1	79,080
		2	80,560
	Kyger Creek	1	19,280
		2	18,560
		3	17,910
		4	18,710
		5	18,740
	Miami Fort	5	760
		6	11,380
		7	38,510
	Muskingum River	1	14,880
		2	14,170
		3	13,950
		4	11,780
		5	40,470
	Niles	1	6,940
		2	9,100
	Picway	5	4,930
	R.E. Burger	3	6,150
		4	10,780
		5	12,430
	W.H. Sammis	5	24,170
		6	39,930
		7	43,220
	W.C. Beckjord	5	8,950
		6	23,020
Pennsylvania	Armstrong	1	14,410
		2	15,430
	Brunner Island	1	27,760
		2	31,100
		3	53,820
	Cheswick	1	39,170
	Conemaugh	1	59,790
		2	66,450
	Hatfield's Ferry	1	37,830
		2	37,320
		3	40,270
	Martins Creek	1	12,660
		2	12,820
	Portland	1	5,940
		2	10,230
	Shawville	1	10,320
		2	10,320
		3	14,220
		4	14,070
	Sunbury	3	8,760
		4	11,450
Tennessee	Allen	1	15,320
		2	16,770
		3	15,670
	Cumberland	1	86,700
		2	94,840
	Gallatin	1	17,870
		2	17,310
		3	20,020
		4	21,260
	Johnsonville	1	7,790
		2	8,040
		3	8,410
		4	7,990
		5	8,240
		6	7,890
		7	8,980
		8	8,700
		9	7,080
		10	7,550
West Virginia	Albright	3	12,000

TABLE A—AFFECTED SOURCES AND UNITS IN PHASE I AND THEIR SULFUR DIOXIDE ALLOWANCES (TONS)—Continued

State	Plant name	Generator	Phase I allowances
	Fort Martin	1	41,590
		2	41,200
	Harrison	1	48,620
		2	46,150
		3	41,500
	Kammer	1	18,740
		2	19,460
		3	17,390
	Mitchell	1	43,980
		2	45,510
	Mount Storm	1	43,720
		2	35,580
		3	42,430
Wisconsin	Edgewater	4	24,750
	La Crosse/Genoa	3	22,700
	Nelson Dewey	1	6,010
		2	6,680
	N. Oak Creek	1	5,220
		2	5,140
		3	5,370
		4	6,320
	Pulliam	8	7,510
	S. Oak Creek	5	9,670
		6	12,040
		7	16,180
		8	15,790

(f) ENERGY CONSERVATION AND RENEWABLE ENERGY.—

(1) DEFINITIONS.—As used in this subsection:

(A) QUALIFIED ENERGY CONSERVATION MEASURE.—The term ''qualified energy conservation measure'' means a cost effective measure, as identified by the Administrator in consultation with the Secretary of Energy, that increases the efficiency of the use of electricity provided by an electric utility to its customers.

(B) QUALIFIED RENEWABLE ENERGY.—The term ''qualified renewable energy'' means energy derived from biomass, solar, geothermal, or wind as identified by the Administrator in consultation with the Secretary of Energy.

(C) ELECTRIC UTILITY.—The term ''electric utility'' means any person, State agency, or Federal agency, which sells electric energy.

(2) ALLOWANCES FOR EMISSIONS AVOIDED THROUGH ENERGY CONSERVATION AND RENEWABLE ENERGY.—

(A) IN GENERAL.—The regulations under paragraph (4) of this subsection shall provide that for each ton of sulfur dioxide emissions avoided by an electric utility, during the applicable period, through the use of qualified energy conservation measures or qualified renewable energy, the Administrator shall allocate a single allowance to such electric utility, on a first-come-first-served basis from the Conservation and Renewable Energy Reserve established under subsection (g), up to a total of 300,000 allowances for allocation from such Reserve.

(B) REQUIREMENTS FOR ISSUANCE.—The Administrator shall allocate allowances to an electric utility under this subsection only if all of the following requirements are met:

(i) Such electric utility is paying for or participating in the qualified energy conservation measures or qualified renewable energy.

(ii) The emissions of sulfur dioxide avoided through the use of qualified energy conservation measures or qualified renewable energy are quantified in accordance with regulations promulgated by the Administrator under this subsection.

(iii)(I) Such electric utility has adopted and is implementing a least cost energy conservation and electric power plan which evaluates a range of resources, including new power supplies, energy conservation, and renewable energy resources, in order to meet expected future demand at the lowest system cost.

(II) The qualified energy conservation measures or qualified renewable energy, or both, are consistent with that plan.

(III) In the case of electric utilities subject to the jurisdiction of a State regulatory authority such plan shall have been approved by such authority. For electric utilities not subject to the jurisdiction of a State regulatory authority such plan shall have been approved by the Administrator.

(iv) In the case of qualified energy conservation measures undertaken by a State regulated electric utility, the Secretary of Energy has certified that the State regulatory authority with jurisdiction over the electric rates of such electric utility has established rates and charges which ensure that the net income of such electric utility after implementation of specific cost effective energy conservation measures is at least as high as such net income would have been if the energy conservation measures had not been implemented. Upon the date of any such certification by the Secretary of Energy, all allowances which, but for this paragraph, would have been allocated under subparagraph (B) before such date, shall be allocated to the electric utility. This clause is not a requirement for qualified renewable energy.

(v) Such utility or any subsidiary of the utility's holding company owns or operates at least one affected unit.

(C) PERIOD OF APPLICABILITY.—Allowances under this subsection shall be allocated only with respect to kilowatt hours of electric energy saved by qualified energy conservation measures or generated by qualified renewable energy after January 1, 1992, and before the earlier of (i) December 31, 2000, or (ii) the date on which any electric utility steam generating unit owned or operated by the electric utility to which the allowances are allocated becomes subject to this subpart (including those sources that elect to become affected by this title, pursuant to section 417).

(D) Determination of avoided emissions.—

(i) APPLICATION.—In order to receive allowances under this subsection, an electric utility shall make an application which—

(I) designates the qualified energy conservation measures implemented and the qualified renewable energy sources used for purposes of avoiding emissions;

(II) calculates, in accordance with subparagraphs (F) and (G), the number of tons of emissions avoided by reason of the implementation of such measures or the use of such renewable energy sources; and

(III) demonstrates that the requirements of subparagraph (B) have been met.

(ii) APPROVAL.—Such application for allowances by a State regulated electric utility shall require approval by the State regulatory authority with jurisdiction over such electric utility. The authority shall review the application for accuracy and compliance with this subsection and the rules under this subsection. Electric utilities whose retail rates are not subject to the jurisdiction of a State regulatory authority shall apply directly to the Administrator for such approval.

(E) AVOIDED EMISSIONS FROM QUALIFIED ENERGY CONSERVATION MEASURES.—For the purposes of this subsection, the emission tonnage deemed avoided by reason of the implementation of qualified energy conservation measures for any calendar year shall be a tonnage equal to the product of multiplying—

(i) the kilowatt hours that would otherwise have been supplied by the utility during such year in the absence of such qualified energy conservation measures, by

(ii) 0.004, and dividing the product so derived by 2,000.

(F) AVOIDED EMISSIONS FROM THE USE OF QUALIFIED RENEWABLE ENERGY.—The emissions tonnage deemed avoided by reason of the use of qualified renewable energy by an electric utility for any calendar year shall be a tonnage equal to the product of multiplying—

(i) the actual kilowatt hours generated by, or purchased from, qualified renewable energy, by

(ii) 0.004, and dividing the product so derived by 2,000.

(G) PROHIBITIONS.—

(i) No allowances shall be allocated under this subsection for the implementation of programs that are exclusively informational or educational in nature.

(ii) No allowances shall be allocated for energy conservation measures or renewable energy that were operational before January 1, 1992.

(3) SAVINGS PROVISION.—Nothing in this subsection precludes a State or State regulatory authority from providing additional incentives to utilities to encourage investment in demand-side resources.

(4) REGULATIONS.—The Administrator shall implement this subsection under 40 C.F.R. Part 73 (2002), amended as appropriate by the Administrator. Such regulations shall list energy conservation measures and renewable energy sources which may be treated as qualified energy conservation measures and qualified renewable energy for purposes of this subsection. Allowances shall only be allocated if all requirements of this subsection and the rules promulgated to implement this subsection are complied with. The Administrator shall review the determinations of

each State regulatory authority under this subsection to encourage consistency from electric utility and from State-to-State in accordance with the Administrator's rules. The Administrator shall publish and make available to the public the findings of this review no less than annually.

(g) CONSERVATION AND RENEWABLE ENERGY RESERVE.—The Administrator shall establish a Conservation and Renewable Energy Reserve under this subsection. Beginning on January 1, 1995, the Administrator may allocate from the Conservation and Renewable Energy Reserve an amount equal to a total of 300,000 allowances for emissions of sulfur dioxide pursuant to section 411. In order to provide 300,000 allowances for such reserve, in each year beginning in calendar year 2000 and until calendar year 2009, inclusive, the Administrator shall reduce each unit's basic Phase II allowance allocation on the basis of its pro rata share of 30,000 allowances. Notwithstanding the prior sentence, if allowances remain in the reserve on January 1, 2010, the Administrator shall allocate such allowances for affected units under section 414 on a pro rata basis. For purposes of this subsection, for any unit subject to the emissions limitation requirements of section 414, the term ''pro rata basis'' refers to the ratio which the reductions made in such unit's allowances in order to establish the reserve under this subsection bears to the total of such reductions for all such units.

(h) ALTERNATIVE ALLOWANCE ALLOCATION FOR UNITS IN CERTAIN UTILITY SYSTEMS WITH OPTIONAL BASELINE.—

(1) OPTIONAL BASELINE FOR UNITS IN CERTAIN SYSTEMS.—In the case of a unit subject to the emissions limitation requirements of this section which (as of November 15, 1990)—

(A) has an emission rate below 1.0 lbs/mmBtu,

(B) has decreased its sulfur dioxide emissions rate by 60 percent or greater since 1980, and

(C) is part of a utility system which has a weighted average sulfur dioxide emissions rate for all fossil fueled-fired units below 1.0 lbs/mmBtu, at the election to the owner or operator of such unit, the unit's baseline may be calculated

(i) as provided under section 411, or

(ii) by utilizing the unit's average annual fuel consumption at a 60 percent capacity factor. Such election shall be made no later than March 1, 1991.

(2) ALLOWANCE ALLOCATION.—Whenever a unit referred to in paragraph (1) elects to calculate its baseline as provided in clause (ii) of paragraph (1), the Administrator shall allocate allowances for the unit pursuant to section 412(a), this section, and section 414 (as Basic Phase II allowance allocations) in an amount equal to the baseline selected multiplied by the lower of the average annual emission rate for such unit in 1989, or 1.0 lbs./mmBtu. Such allowance allocation shall be in lieu of any allocation of allowances under this section and section 414.

SEC. 414. PHASE II. SULFUR DIOXIDE REQUIREMENTS.

(a) APPLICABILITY.—

(1) After January l, 2000, each existing utility unit as provided below is subject to the limitations or requirements of this section. Each utility unit subject to an annual sulfur dioxide tonnage emission limitation under this section is an affected unit under this subpart. Each source that includes one or more affected units is an affected source. In the case of an existing unit that was not in operation during calendar year 1985, the emission rate for a calendar year after 1985, as determined by the Administrator, shall be used in lieu of the 1985 rate.

(2) In addition to basic Phase II allowance allocations, in each year beginning in calendar year 2000 and ending in calendar year 2009, inclusive, the Administrator shall allocate up to 530,000 Phase II bonus allowances pursuant to subsections (b)(2),(c)(4), (d)(3)(A) and (B), and (h)(2) of this section and section 415.

(3) In addition to basic Phase II allowances allocations and Phase II bonus allowance allocations, beginning January 1, 2000, the Administrator shall allocate for each unit listed on Table A in section 413 (other than units at Kyger Creek, Clifty Creek, and Joppa Stream) and located in the States of Illinois, Indiana, Ohio, Georgia, Alabama, Missouri, Pennsylvania, West Virginia, Kentucky, or Tennessee allowances in an amount equal to 50,000 multiplied by the unit's pro rata share of the total number of basic allowances allocated for all units listed on Table A (other than units at Kyger Creek, Clifty Creek, and Joppa Stream). Allowances allocated pursuant to this paragraph shall not be subject to the 8,900,000 ton limitation in section 412(a).

(b) UNITS EQUAL TO, OR ABOVE, 75 MWE AND 1.20 LBS/MMBTU.—

(1) Except as otherwise provided in paragraph (3), after January 1, 2000, it shall be unlawful for any existing utility unit that serves a generator with nameplate capacity equal to, or greater, than 75 MWe and an actual 1985 emission rate equal to or greater than 1.201bs/mmBtu to exceed an annual sulfur dioxide tonnage emission limitation equal to the product of the unit's baseline multiplied by an emission rate equal to 1.20 lbs/mmBtu, divided by 2,000, unless the owner or operator of such unit holds allowances to emit not less than the unit's total annual emissions or, for a year after 2007, unless the owner or operator of the source that includes such unit holds allowances to emit not less than the total annual emissions of all affected units at the source.

(2) In addition to allowances allocated pursuant to paragraph (1) and section 412(a) as basic Phase II allowance allocations, beginning January 1, 2000, and for each calendar year thereafter until and including 2009, the Administrator shall allocate annually for each unit subject to the emissions limitation requirements of paragraph (1) with an actual 1985 emissions rate greater than 1.20 lbs/mmBtu and less than 2.50 lbs/mmBtu and a baseline capacity factor of less than 60 percent, allowances from the reserve created pursuant to subsection (a)(2) in an amount equal to 1.20 lbs/mmBtu multiplied by 50 percent of the difference, on a Btu basis, between the unit's baseline and the unit's fuel consumption at a 60 percent capacity factor.

(3) After January 1, 2000, it shall be unlawful for any existing utility unit with an actual 1985 emissions rate equal to or greater than 1.20 lbs/mmBtu whose annual average fuel consumption during 1985, 1986, and 1987 on a Btu basis exceeded 90 percent in the form of lignite coal which is located in a State in which, as of July 1, 1989, no county or portion of a county was designated nonattainment under section 107 of this Act for any pollutant subject to the requirements of section 109 of this Act to exceed an annual sulfur dioxide tonnage limitation equal to the product of the unit's baseline multiplied by the lesser of the unit's actual 1985 emissions rate or its allowable 1985 emissions rate, divided by 2,000, unless the owner or operator of such unit holds allowances to emit not less than the unit's total annual emissions or, for a year after 2007, unless the owner or operator of the source that includes such unit holds allowances to emit not less than the total annual emissions of all affected units at the source.

(4) After January 1, 2000, the Administrator shall allocate annually for each unit, subject to the emissions limitation requirements of paragraph (1), which is located in a State with an installed electrical generating capacity of more than 30,000,000 kw in 1988 and for which was issued a prohibition order or a proposed prohibition order (from burning oil), which unit subsequently converted to coal between January 1, 1980 and December 31, 1985, allowances equal to the difference between (A) the product of the unit's annual fuel consumption, on a Btu basis, at a 65 percent capacity factor multiplied by the lesser of its actual or allowable emissions rate during the first full calendar year after conversion, divided by 2,000, and (B) the number of Page–69- allowances allocated for the unit pursuant to paragraph (1): *Provided,* That the number of allowances allocated pursuant to this paragraph shall not exceed an annual total of five thousand. If necessary to meeting the restriction imposed in the preceding sentence the Administrator shall reduce, pro rata, the annual allowances allocated for each unit under this paragraph.

(c) COAL OR OIL-FIRED UNITS BELOW 75 MWE AND ABOVE 1.20 LBS/MMBTU.—

(1) Except as otherwise provided in paragraph (3), after January 1, 2000, it shall be unlawful for a coal or oil-fired existing utility unit that serves a generator with nameplate capacity of less than 75 MWe and an actual 1985 emission rate equal to, or greater than, 1.20 lbs/mmBtu and which is a unit owned by a utility operating company whose aggregate nameplate fossil fuel steam-electric capacity is, as of December 31, 1989, equal to, or greater than, 250 MWe to exceed an annual sulfur dioxide emissions limitation equal to the product of the unit's baseline multiplied by an emission rate equal to 1.20 lbs/mmBtu, divided by 2,000 unless the owner or operator of such unit holds allowances to emit not less than the unit's total annual emissions for a year after 2007, or the owner or operator of the source that includes such unit holds allowances to emit not less than the total annual emissions of all affected units at the source.

(2) After January 1, 2000, it shall be unlawful for a coal or oil-fired existing utility unit that serves a generator with nameplate capacity of less than 75 MWe and an actual 1985 emission rate equal to, or greater than, 1.20 lbs/mmBtu (excluding units subject to section 111 of the Act or to a federally enforceable emissions limitation for sulfur dioxide equivalent to an annual rate of less than 1.20 lbs/mmBtu) and which is a unit owned by a utility operating company whose aggregate nameplate fossil fuel steam-electric capacity is, as of December 31, 1989, less than 250 MWe, to exceed an annual sulfur dioxide tonnage emissions limitation equal to the product of the unit's baseline multiplied by the lesser of its actual 1985 emissions rate or its allowable 1985 emissions rate, divided by 2,000, unless the owner or operator of such unit holds allowances to emit not less than the unit's total annual emissions, for a year after 2007, or the owner or operator of the source that includes such unit holds allowances to emit not less than the total annual emissions of all affected units at the source.

(3) After January 1, 2000 it shall be unlawful for any existing utility unit with a nameplate capacity below 75 MWe and an actual 1985 emissions rate equal to, or greater than, 1.20 lbs/mmBtu which became operational on or before December 31, 1965, which is owned by a utility operating company with, as of December 31, 1989, a total fossil fuel steam-electric generating capacity greater than 250 MWe, and less than 450 MWe which serves fewer than 78,000 electrical customers as of November 15, 1990, to exceed an annual sulfur dioxide emissions tonnage limitation equal to the product of its baseline multiplied by the lesser of its actual or allowable 1985 emission rate, divided by 2,000, unless the owner or operator holds allowances to emit

not less than the units total annual emissions or, for a year after 2007, unless the owner or operator of the source that includes such unit holds allowances to emit not less than the total annual emissions of all affected units at the source. After January 1, 2010, it shall be unlawful for each unit subject to the emissions limitation requirements of this paragraph to exceed an annual emissions tonnage limitation equal to the product of its baseline multiplied by an emissions rate of 1.20 lbs/mmBtu, divided by 2,000, unless the owner or operator holds allowances to emit not less than the unit's total annual emissions for a year after 2007, or the owner or operator of the source that includes such unit holds allowances to emit not less than the total annual emissions of all affected units at the source.

(4) In addition to allowances allocated pursuant to paragraph (1) and section 412(a) as basic Phase II allowance allocations, beginning January 1, 2000, and for each calendar year thereafter until and including 2009, inclusive, the Administrator shall allocate annually for each unit subject to the emissions limitation requirements of paragraph (1) with an actual 1985 emissions rate equal to, or greater than, 1.20 lbs/mmBtu and less than 2.50 lbs/mmBtu and a baseline capacity factor of less than 60 percent, allowances from the reserve created pursuant to subsection (a)(2) in an amount equal to 1.20 lbs/mmBtu multiplied by 50 percent of the difference, on a Btu basis, between the unit's baseline and the unit's fuel consumption at a 60 percent capacity factor.

(5) After January 1, 2000, it shall be unlawful for any existing unit with a nameplate capacity below 75 MWe and an actual 1985 emissions rate equal to, or greater than, 1.20 lbs/mmBtu which is part of an electric utility system which, as of November 15, 1990—

(A) has at least 20 percent of its fossil-fuel capacity controlled by flue gas desulfurization devices,

(B) has more than 10 percent of its fossil-fuel capacity consisting of coal-fired unites of less than 75 MWe, and

(C) has large units (greater than 400 MWe) all of which have difficult or very difficult FGD Retrofit Cost Factors (according to the Emissions and the FGD Retrofit Feasibility at the 200 Top Emitting Generating Stations, prepared for the United States Environmental Protection Agency on January 10, 1986) to exceed an annual sulfur dioxide emissions tonnage limitation equal to the product of its baseline multiplied by an emissions rate of 2.5 lbs/mmBtu, divided by 2,000, unless the owner or operator holds allowances to emit not less than the unit's total annual emissions, for a year after 2007, or the owner or operator of the source that includes such unit holds allowances to emit not less than the total annual emissions of all affected units at the source. After January 1, 2010, it shall be unlawful for each unit subject to the emissions limitation requirements of this paragraph to exceed an annual emissions tonnage limitation equal to the project of its baseline multiplied by an emissions rate of 1.20 lbs/mmBtu, divided by 2,000, unless the owner or operator holds for use allowances to emit not less than the unit's total annual emissions for a year after 2007, or the owner or operator of the source that includes such unit holds allowances to emit not less than the total annual emissions of all affected units at the source.

(d) COAL-FIRED UNITS BELOW 1.20 LBS/MMBTU.—

(1) After January 1, 2000, it shall be unlawful for any existing coal-fired utility unit the lesser of whose actual or allowable 1985 sulfur dioxide emissions rate is less than 0.60 lbs/mmBtu to exceed an annual sulfur dioxide tonnage emission limitation equal to the product of the unit's baseline multiplied by—

(A) the lesser of 0.60 lbs/mmBtu or the unit's allowable 1985 emissions rate, and

(B) a numerical factor of 120 percent, divided by 2,000, unless the owner or operator of such unit holds allowances to emit not less than the unit's total annual emissions for a year after 2007, or the owner or operator of the source that includes such unit holds allowances to emit not less than the total annual emissions of all affected units at the source.

(2) After January 1, 2000, it shall be unlawful for any existing coal-fired utility unit the lesser of whose actual or allowable 1985 sulfur dioxide emissions rate is equal to, or greater than, 0.60 lbs/mmBtu and less than 1.20 lbs/mmBtu to exceed an annual sulfur dioxide tonnage emissions limitation equal to the product of the unit's baseline multiplied by (A) the lesser of its actual 1985 emissions rate or its allowable 1985 emissions rate, and (B) a numerical factor of 120 percent, divided by 2,000, unless the owner or operator of such unit holds allowances to emit not less than the unit's total annual emissions for a year after 2007, or the owner or operator of the source that includes such unit holds allowances to emit not less than the total annual emissions of all affected units at the source.

(3)(A) In addition to allowances allocated pursuant to paragraph (1) and section 412(a) as basic Phase II allowance allocations, at the election of the designated representative of the operating company, beginning January 1, 2000, and for each calendar year thereafter until and including 2009, the Administrator shall allocate annually for each unit subject to the emissions limitation requirements of paragraph (1) allowances from the reserve created pursuant to subsection (a)(2) in an amount equal to the amount by which—

(i) the product of the lesser of 0.60 lbs.mmBtu or the unit's allowable 1985 emissions rate multiplied by the unit's baseline adjusted to reflect operation at a 60 percent capacity factor, divided by 2,000, exceeds

(ii) the number of allowances allocated for the unit pursuant to paragraph (1) and section 403(a)(1) as basic Phase II allowance allocations.

(B) In addition to allowances allocated pursuant to paragraph (2) and section 412(a) as basic Phase II allowance allocations, at the election of the designated representative of the operating company, beginning January 1, 2000, and for each calendar year thereafter until and including 2009, the Administrator shall allocate annually for each unit subject to the emissions limitation requirements of paragraph (2) allowances from the reserve created pursuant to subsection (a)(2) in an amount equal to the amount by which—

(i) the product of the lesser of the unit's actual 1985 emissions rate or its allowable 1985 emissions rate multiplied by the unit's baseline adjusted to reflect operation at a 60 percent capacity factor, divided by 2,000, exceeds

(ii) the number of allowances allocated for the unit pursuant to paragraph (2) and section 412(a) as basic Phase 11 allowance allocations.

(C) An operating company with units subject to the emissions limitation requirements of this subsection may elect the allocation of allowances as provided under subparagraphs (A) and (B). Such election shall apply to the annual allowance allocation for each and every unit in the operating company subject to the emissions limitation requirements of this subsection. The Administrator shall allocate allowances pursuant to subparagraphs (A) and (B) only in accordance with this subparagraph.

(4) Notwithstanding any other provision of this section, at the election of the owner or operator, after January l, 2000, the Administrator shall allocate in lieu of allocation, pursuant to paragraph (1), (2), (3), (5), or (6), allowances for a unit subject to the emissions limitation requirements of this subsection which commenced commercial operation on or after January 1, 1981 and before December 31, 1985, which was subject to, and in compliance with, section 111 of the Act in an amount equal to the unit's annual fuel consumption, on a Btu basis, at a 65 percent capacity factor multiplied by the unit's allowable 1985 emissions rate, divided by 2,000.

(5) For the purposes of this section, in the case of an oil- and gas-fired unit which has been awarded a clean coal technology demonstration grant as of January 1, 1991, by the United States Department of Energy, beginning January 1, 2002, the Administrator shall allocate for the unit allowances in an amount equal to the unit's baseline multiplied by 1.201bs/mmBtu, divided by 2,000.

(e) OIL AND GAS-FIRED UNITS EQUAL TO OR GREATER THAN 0.60 LBS/MMBTU AND LESS THAN 1.20 LBS/MMBTU.—After January 1, 2000, it shall be unlawful for any existing oil and gas-fired utility unit the lesser of whose actual or allowable 1985 sulfur dioxide emission rate is equal to, or greater than, 0.60 lbs/mmBtu, but less than 1.20 lbs/mmBtu to exceed an annual sulfur dioxide tonnage limitation equal to the product of the unit's baseline multiplied by (A) the lesser of the unit's allowable 1985 emissions rate or its actual 1985 emissions rate and (B) a numerical factor of 120 percent divided by 2,000, unless the owner or operator of such unit holds allowances to emit not less than the unit's total annual emissions for a year after 2007, or the owner or operator of the source that includes such unit holds allowances to emit not less than the total annual emissions of all affected units at the source.

(f) OIL AND GAS-FIRED UNITS LESS THAN 0.601BS/MMBTU.—

(1) After January 1, 2000, it shall be unlawful for any oil and gas-fired existing utility unit the lesser of whose actual or allowance 1985 emission rate is less than 0.60 lbs/mmBtu and whose average annual fuel consumption during the period 1980 through 1989 on a Btu basis was 90 percent or less in the form of natural gas to exceed an annual sulfur dioxide tonnage emissions limitation equal to the product of the unit's baseline multiplied by—

(A) the lesser of 0.60 lbs/mmBtu or the unit's allowance 1985 emissions, and

(B) a numerical factor of 120 percent, divided by 2,000, unless the owner or operator of such unit holds allowances to emit not less than the unit's total annual emissions, for a year after 2007, or the owner or operator of the source that includes such unit holds allowances to emit not less than the total annual emissions of all affected units at the source.

(2) In addition to allowances allocated pursuant to paragraph (1) as basic Phase II allowance allocations and section 412(a), beginning January l, 2000, the Administrator shall, in the case of any unit operated by a utility that furnishes electricity, electric energy, steam, and natural gas within an area consisting of a city and 1 contiguous county, and in the case of any unit owned by a State authority, the output of which unit is furnished within that same area consisting of a city and 1 contiguous county, the Administrator shall allocate for each unit in the utility its pro rata share of 7,000 allowances and for each unit in the State authority its pro rata share of 2,000 allowances.

(g) UNITS THAT COMMENCE COMMERCIAL OPERATION BETWEEN 1986 AND DECEMBER 31, 1995.—

''(1) After January 1, 2000, it shall be unlawful for any utility unit that has commenced commercial operation on or after

January 1, 1986, but not later than September 30, 1990 to exceed an annual tonnage emission limitation equal to the product of the unit's annual fuel consumption, on a Btu basis, at a 65 percent capacity factor multiplied by the unit's allowance 1985 sulfur dioxide emission rate (converted, if necessary, to pounds per mmBtu), divided by 2,000 unless the owner or operator of such unit holds allowances to emit not less than the unit's total annual emissions for a year after 2007, or the owner or operator of the source that includes such unit holds allowances to emit not less than the total annual emissions of all affected units at the source.

(2) After January 1, 2000, the Administrator shall allocate allowances pursuant to section 411 to each unit which is listed in table B of this paragraph in an annual amount equal to the amount specified in table B.

TABLE B

Unit	Allowances
Brandon Shores	8,907
Miller 4	9,197
TNP One 2	4,000
Zimmer 1	18,458
Spruce 1	7,647
Clover 1	2,796
Clover 2	2,796
Twin Oak 2	1,760
Twin Oak 1	9,158
Cross 1	6,401
Malakoff 1	1,759

Notwithstanding any other paragraph of this subsection, for units subject to this paragraph, the Administrator shall not allocate allowances pursuant to any other paragraph of this subsection, provided that the owner or operator of a unit listed on Table B may elect an allocation of allowances under another paragraph of this subsection in lieu of an allocation under this paragraph.

(3) Beginning January 1, 2000, the Administrator shall allocate to the owner or operator of any utility unit that commences commercial operation, or has commenced commercial operation, on or after October 1, 1990, but not later than December 31, 1992 allowances in an amount equal to the product of the unit's annual fuel consumption, on a Btu basis, at a 65 percent capacity factor multiplied by the lesser of 0.30 lbs/mmBtu or the unit's allowable sulfur dioxide emission rate (converted, if necessary, to pounds per mmBtu), divided by 2,000.

(4) Beginning January 1, 2000, the Administrator shall allocate to the owner or operator of any utility unit that has commenced construction before December 31, 1990 and that commences commercial operation between January 1, 1993 and December 31, 1995, allowances in an amount equal to the product of the unit's annual fuel consumption, on a Btu basis, at a 65 percent capacity factor multiplied by the lesser of 0.30 lbs/mmBtu or the unit's allowable sulfur dioxide emission rate (converted, if necessary, to pounds per mmBtu), divided by 2,000.

(5) After January 1, 2000, it shall be unlawful for any existing utility unit that has completed conversion from predominantly gas fired existing operation to coal fired operation between January 1, 1985 and December 31, 1987, for which there has been allocated a proposed or final prohibition order pursuant to section 301(b) of the Powerplant and Industrial Fuel Use Act of 1978 (42 U.S.C. 8301 et seq, repealed 1987) to exceed an annual sulfur dioxide tonnage emissions limitation equal to the product of the unit's annual fuel consumption, on a Btu basis, at a 65 percent capacity factor multiplied by the lesser of 1.20 lbs/mmBtu or the unit's allowable 1987 sulfur dioxide emissions rate, divided by 2,000, unless the owner or operator of such unit has obtained allowances equal to its actual emissions for a year after 2007, or the owner or operator of the source that includes such unit holds allowances to emit not less than the total annual emissions of all affected units at the source.

(6) Unless the Administrator has approved a designation of such facility under section 417, the provisions of this subpart shall not apply to a ''qualifying small power production facility'' or ''qualifying cogeneration facility'' (within the meaning of section 3(17)(C) or 3(18)(B) of the Federal Power Act) or to a 'new independent power production facility' if, as of November 15, 1990—

(A) an applicable power sales agreement has been executed;

(B) the facility is the subject of a State regulatory authority order requiring an electric utility to enter into a power sales agreement with, purchase capacity from, or (for purposes of establishing terms and conditions of the electric utility's purchase of power) enter into arbitration concerning, the facility;

(C) an electric utility has issued a letter of intent or similar instrument committing to purchase power from the facility at a previously offered or lower price and a power sales agreement is executed within a reasonable period of time; or

(D) the facility has been selected as a winning bidder in a utility competitive bid solicitation.

(h) OIL AND GAS-FIRED UNITS LESS THAN 10 PERCENT OIL CONSUMED.—

(1) After January 1, 2000, it shall be unlawful for any oil- and gas-fired utility unit whose average annual fuel consumption during the period 1980 through 1989 on a Btu basis exceeded 90 percent in the form of natural gas to exceed an annual sulfur dioxide tonnage limitation equal to the product of the unit's baseline multiplied by the unit's actual 1985 emissions rate divided by 2,000 unless the owner or operator of such unit holds allowances to emit not less than the unit's total annual emissions for a year after 2007, or the owner or operator of the source that includes such unit holds allowances to emit not less than the total annual emissions of all affected units at the source.

(2) In addition to allowances allocated pursuant to paragraph (1) and section 412(a) as basic Phase II allowance allocations, beginning January 1, 2000, and for each calendar year thereafter until and including 2009, the Administrator shall allocate annually for each unit subject to the emissions limitation requirements of paragraph (1) allowances from the reserve created pursuant to subsection (a)(2) in an amount equal to the unit's baseline multiplied by 0.050 lbs/mmBtu, divided by 2,000.

(3) In addition to allowances allocated pursuant to paragraph (1) and section 412(a), beginning January 1, 2010, the Administrator shall allocate annually for each unit subject to the emissions limitation requirements of paragraph (1) allowances in an amount equal to the unit's baseline multiplied by 0.050 lbs/mmBtu, divided by 2,000.

(i) UNITS IN HIGH GROWTH STATES.—

(1) In addition to allowances allocated pursuant to this section and section 412(a) as basic Phase II allowance allocations, beginning January 1, 2000, the Administrator shall allocate annually allowances for each unit, subject to an emissions limitation requirement under this section, and located in a State that—

(A) has experienced a growth in population in excess of 25 percent between 1980 and 1988 according to State Population and Household Estimates, With Age, Sex, and Components of Change: 1981–1988 allocated by the United States Department of Commerce, and

(B) had an installed electrical generating capacity of more than 30,000,000 kw in 1988, in an amount equal to the difference between

(i) the number of allowances that would be allocated for the unit pursuant to the emissions limitation requirements of this section applicable to the unit adjusted to reflect the unit's annual average fuel consumption on a Btu basis of any three consecutive calendar years between 1980 and 1989 (inclusive) as elected by the owner or operator and

(ii) the number of allowances allocated for the unit pursuant to the emissions limitation requirements of this section:

Provided, That the number of allowances allocated pursuant to this subsection shall not exceed an annual total of 40,000. If necessary to meeting the 40,000 allowance restriction imposed under this subsection the Administrator shall reduce, pro rata, the additional annual allowances allocated to each unit under this subsection.

(2) Beginning January 1, 2000, in addition to allowances allocated pursuant to this section and section 403(a)(1) as basic Phase II allowance allocations, the Administrator shall allocate annually for each unit subject to the emissions limitation requirements of subsection (b)(1)—

(A) the lesser of whose actual or allowable 1980 emissions rate has declined by 50 percent or more as of November 15, 1990,

(B) whose actual emissions rate is less than 1.2 lbs/mmBtu as of January 1, 2000,

(C) which commenced operation after January 1, 1970,

(D) which is owned by a utility company whose combined commercial and industrial kilowatt-hour sales have increased by more than 20 percent between calendar year 1980 and November 15, 1990, and

(E) whose company-wide fossil-fuel sulfur dioxide emissions rate has declined 40 percent or more from 1980 to 1988, allowances in an amount equal to the difference between—

(i) the number of allowances that would be allocated for the unit pursuant to the emissions limitation requirements of subsection (b)(1) adjusted to reflect the unit's annual average fuel consumption on a Btu basis for any three consecutive years between 1980 and 1989 (inclusive) as elected by the owner or operator, and

(ii) the number of allowances allocated for the unit pursuant to the emissions limitation requirements of subsection (b)(1)

Provided, That the number of allowances allocated pursuant to this paragraph shall not exceed an annual total of 5,000. If necessary to meeting the 5,000 allowance restriction imposed in the last clause of the preceding sentence the Administrator shall reduce, pro rata, the additional allowances allocated to each unit pursuant to this paragraph.

(j) CERTAIN MUNICIPALLY OWNED POWER PLANTS.—Beginning January 1, 2000, in addition to allowances allocated pursuant to this section and section 412(a) as basic Phase II allowance allocations, the Administrator shall allocate annually for each existing municipally owned oil and gas-fired utility unit with nameplate capacity equal to, or less than, 40 MWe, the lesser of whose actual or allowable 1985 sulfur dioxide emission rate is less than 1.20 lbs/mmBtu, allowances in an amount equal to the product of the unit's annual fuel consumption on a Btu basis at a 60 percent capacity factor multiplied by the lesser of its allowable 1985 emission rate or its actual 1985 emission rate, divided by 2,000.

SEC. 415. ALLOWANCES FOR STATES WITH EMISSIONS RATES AT OR BELOW 0.80 LBS/MMBTU.

(a) ELECTION OF GOVERNOR.—In addition to basic Phase II allowance allocations, upon the election of the Governor of any State, with a 1985 statewide annual sulfur dioxide emissions rate equal to or less than, 0.80 lbs/mmBtu, averaged over all fossil fuel-fired utility steam generating units, beginning January 1, 2000, and for each calendar year thereafter until and including 2009, the Administrator shall allocate, in lieu of other

Phase 11 bonus allowance allocations, allowances from the reserve created pursuant to section 414(a)(2) to all such units in the State in an amount equal to 125,000 multiplied by the unit's pro rata share of electricity generated in calendar year 1985 at fossil fuel-fired utility steam units in all States eligible for the election.

(b) NOTIFICATION OF ADMINISTRATOR.—Pursuant to section 412(a), each Governor of a State eligible to make an election under paragraph (a) shall notify the Administrator of such election. In the event that the Governor of any such State fails to notify the Administrator of the Governor's elections, the Administrator shall allocate allowances pursuant to section 414.

(c) ALLOWANCES AFTER JANUARY 1, 2010.—After January 1, 2010, the Administrator shall allocate allowances to units subject to the provisions of this section pursuant to section 414.

SEC. 416. ELECTION FOR ADDITIONAL SOURCES.

(a) APPLICABILITY.—The owner or operator of any unit that is not, nor will become, an affected unit under section 412(b), 413, or 414, that emits sulfur dioxide, may elect to designate that unit or source to become an affected unit and to receive allowances under this subpart. An election shall be submitted to the Administrator for approval, along with a permit application and proposed compliance plan in accordance with section 404. The Administrator shall approve a designation that meets the requirements of this section, and such designated unit shall be allocated allowances, and be an affected unit for purposes of this subpart.

(b) ESTABLISHMENT OF BASELINE.—The baseline for a unit designated under this section shall be established by the Administrator by regulation, based on fuel consumption and operating data for the unit for calendar years 1985, 1986, and 1987, or if such data is not available, the Administrator may prescribe a baseline based on alternative representative data.

(c) EMISSION LIMITATIONS.—

(1) For a unit for which an election, along with a permit application and compliance plan, is submitted to the Administrator under paragraph (a) on or after January 1, 2002, annual emissions limitations for sulfur dioxide shall be equal to the product of the baseline multiplied by the lesser of the unit's 1985 actual or allowable emission rate in lbs/mmBtu, or, if the unit did not operate in 1985, by the lesser of the unit's actual or allowable emission rate for a calendar year after 1985 (as determined by the Administrator), divided by 2,000.

(2) For a unit for which an election, along with a permit application and compliance plan, is submitted to the Administrator under paragraph (a) on or after January 1, 2002, annual emissions limitations for sulfur dioxide shall be equal to the product of the baseline multiplied by the lesser of the unit's 1985 actual or allowable emission rate in lbs/mmBtu, or, if the unit did not operate in 1985, by the lesser of the unit's actual or allowable emission rate for a calendar year after 1985 (as determined by the Administrator), divided by 4,000.

(d) ALLOWANCES AND PERMITS.—The Administrator shall issue allowances to an affected unit under this section in an amount equal to the emissions limitation calculated under subsection (c), in accordance with section 412. Such allowance may be used in accordance with, and shall be subject to, the provisions of section 412. Affected sources under this section shall be subject to the requirements of sections 404, 405, 406, and 412.

(e) LIMITATION.—Any unit designated under this section shall not transfer or bank allowances produced as a result of reduced utilization or shutdown, except that, such allowances may be transferred or carried forward for use in subsequent years to the extent that the reduced utilization or shutdown results from the replacement of thermal energy from the unit designated under this section, with thermal energy generated by any other unit or units subject to the requirements of this subpart, and the designated unit's allowances are transferred or carried forward for use at such other replacement unit or units. In no case may the Administrator allocate to a source designated under this section allowances in an amount greater than the emissions resulting from operation of the source in full compliance with the requirements of this Act. No such allowances shall authorize operation of a unit in violation of any other requirements of this Act.

(f) IMPLEMENTATION.—The Administrator shall implement this section under 40 CFR Part 74 (2002), amended as appropriate by the Administrator.

SEC. 417. AUCTIONS, RESERVE.

(a) SPECIAL RESERVE OF ALLOWANCES.—For purposes of establishing the Special Allowance Reserve, the Administrator shall withhold—

(1) 2.8 percent of the allocation of allowances for each year from 1995 through 1999 inclusive; and

(2) 2.8 percent of the basic Phase 11 allowance allocation of allowances for each year beginning in the year 2000

which would (but for this subsection) be issued for each affected unit at an affected source. The Administrator shall record such withholding for purposes of transferring the proceeds of the allowance sales under this subsection. The allowances so withheld shall be deposited in the Reserve under this section.

(b) AUCTION SALES.—

(1) SUBACCOUNT FOR AUCTIONS.—The Administrator shall establish an Auction Subaccount in the Special Reserve established under this section. The Auction Subaccount shall contain allowances to be sold at auction under this section in the amount of 150,000 tons per year for each year from 1995 through 1999, inclusive and 250,000 tons per year for each year from 2000 through 2009, inclusive.

(2) ANNUAL AUCTIONS.—Commencing in 1993 and in each year thereafter until 2010, the Administrator shall conduct auctions at which the allowances referred to in paragraph (1) shall be offered for sale in accordance with regulations promulgated by the Administrator. The allowances referred to in paragraph (1) shall be offered for sale at auction in the amounts specified in table C. The auction shall be open to any person. A person wishing to bid for such allowances shall submit (by a date set by the Administrator) to the Administrator (on a sealed bid schedule provided by the Administrator) offers to purchase specified numbers of allowances at specified prices. Such regulations shall specify that the auctioned allowances shall be allocated and sold on the basis of bid price, starting with the highest-priced bid and continuing until all allowances for sale at such auction have been allocated. The regulations shall not permit that a minimum price be set for the purchase of withheld allowances. Allowances purchased at the auction may be used for any purpose and at any time after the auction, subject to the provisions of this subpart and subpart 2.

TABLE C—NUMBER OF ALLOWANCES AVAILABLE FOR AUCTION

Year of sale	Spot auction (same year)	Advance auction
1993	50,000	100,000
1994	50,000	100,000
1995	50,000	100,000
1996	150,000	100,000
1997	150,000	100,000
1998	150,000	100,000
1999	150,000	100,000
2000	125,000	125,000
2001	125,000	125,000
2002	125,000	125,000
2003	125,000	0
2004–2009	125,000	0

(3) PROCEEDS.—

(A) TRANSFER.—Notwithstanding section 3302 of title 31 of the United States Code or any other provision of law, within 90 days of receipt, the Administrator shall transfer the proceeds from the auction under this section, on a pro rata basis, to the owners or operators of the affected units at an affected source from whom allowances were withheld under subsection (b). No funds transferred from a purchaser to a seller of allowances under this paragraph shall be held by any officer or employee of the United States or treated for any purpose as revenue to the United States or the Administrator.

(B) RETURN.—At the end of each year, any allowances offered for sale but not sold at the auction shall be returned without charge, on a pro rata basis, to the owner or operator of the affected units from whose allocation the allowances were withheld. With 170 days after the date of enactment of the Clear Skies Act of 2003, any allowance withheld under paragraph (a)(2) but not offered for sale at an auction shall be returned without charge, on a pro rata basis, to the owner or operator of the affected units from whose allocation the allowances were withheld.

(4) RECORDING BY EPA.—The Administrator shall record and publicly report the nature, prices and results of each auction under this subsection, including the prices of successful bids, and shall record the transfers of allowances as a result of each auction in accordance with the requirements of this section. The transfer of allowances at such auction shall be recorded in accordance with the regulations promulgated by the Administrator under this subpart.

(c) CHANGES IN AUCTIONS AND WITHHOLDING.—Pursuant to rulemaking after public notice and comment the Administrator may at any time after the year 1998 (in the case of advance auctions) and 2005 (in the case of spot auctions) decrease the number of allowances withheld and sold under this section.

(d) TERMINATION OF AUCTIONS.—Not later than the commencement date of the sulfur dioxide allowance requirement under section 422, the Administrator shall terminate the withholding of allowances and the auction sales under this section. Pursuant to regulations under this section, the Administrator may by delegation or contract provide for the conduct of sales or auctions under the Administrator's supervision by other departments or agencies of the United States Government or by nongovernmental agencies, groups, or organizations.

(e) The Administrator shall implement this section under 40 CFR Part 73 (2002), amended as appropriate by the Administrator.

SEC. 418. INDUSTRIAL SULFUR DIOXIDE EMISSIONS.

(a) REPORT.—Not later than January 1, 1995 and every 5 years thereafter, the Administrator shall transmit to the Congress a report containing an inventory of national annual sulfur dioxide emissions from industrial

sources (as defined in section 411 (11)), including units subject to section 414(g)(2), for all years for which data are available, as well as the likely trend in such emission over the following twenty-year period. The reports shall also contain estimates of the actual emission reduction in each year resulting from promulgation of the diesel fuel desulfurization regulations under section 214.

(b) 5.60 MILLION TON CAP.—Whenever the inventory required by this section indicates that sulfur dioxide emissions from industrial sources, including units subject to section 414(g)(2), and may reasonably be expected to reach levels greater than 5.60 million tons per year, the Administrator shall take such actions under the Act as may be appropriate to ensure that such emissions do not exceed 5.60 million tons per year. Such actions may include the promulgation of new and revised standards of performance for new sources, including units subject to section 414(g)(2), under section 111(b), as well as promulgation of standards of performance for existing sources, including units subject to section 414(g)(2), under authority of this section. For an existing source regulated under this section, ''standard of performance'' means a standard which the Administrator determines is applicable to that source and which reflects the degree of emission reduction achievable through the application of the best system of continuous emission reduction which (taking into consideration the cost of achieving such emission reduction, and any nonair quality health and environmental impact and energy requirements) the Administrator determines has been adequately demonstrated for that category of sources.

(c) ELECTION.—Regulations promulgated under section 414(b) shall not prohibit a source from electing to become an affected unit under section 417.

SEC. 419. TERMINATION.

Starting January l, 2010, the owners or operators of affected units and affected facilities under sections 412(b) and (c) and 416 and shall no longer be subject to the requirements of sections 412 through 417.

Subpart 2—Clear Skies Sulfur Dioxide Allowance Program

SEC. 421. DEFINITIONS.

For purposes of this subpart—

(1) The term ''affected EGU'' means—

(A) for a unit serving a generator before the date of enactment of the Clear Skies Act of 2003, a unit in a State serving a generator with a nameplate capacity of greater than 25 megawatts that produced or produces electricity for sale during 2002 or any year thereafter, except for a cogeneration unit that meets the criteria for qualifying cogeneration facilities codified in Section 292.205 of Title 18 of the Code of Federal Regulations as issued on April 1, 2002 during 2002 and each year thereafter; and

(B) for a unit commencing service of a generator on or after the date of enactment of the Clear Skies Act of 2003, a unit in a State serving a generator that produces electricity for sale during any year starting with the year the unit commences service of a generator, except for a unit serving one or more generators with total nameplate capacity of 25 megawatts or less, or a cogeneration unit that meets the criteria for qualifying cogeneration facilities codified in Section 292.205 of Title 18 of the Code of Federal Regulations as issued on April 1, 2002, during each year starting with the year the unit commences services of a generator.

Notwithstanding paragraphs (A) and (B), the term ''affected EGU'' does not include a solid waste incineration unit subject to section 129 or a unit for the treatment, storage, or disposal of hazardous waste subject to section 3005 of the Solid Waste Disposal Act.

(2) The term ''coal-fired'' with regard to a unit means, for purposes of section 424, combusting coal or any coal-derived fuel alone or in combination with any amount of any other fuel in any year during 1998 through 2002 or, for a unit that commenced operation on or after January 1, 2003, a unit designed to combust coal or any coal-derived fuel alone or in combination with any other fuel.

(3) The term ''Eastern bituminous'' means bituminous that is from a mine located in a State east of the Mississippi River.

(4) The term ''general account'' means an account in the Allowance Tracking System under section 403(c) established by the Administrator for any person under 40 C.F.R. Part 73.31 (c) (2002), amended as appropriate by the Administrator.

(5) The term ''oil-fired'' with regard to a unit means, for purposes of section 424, combusting fuel oil for more than 10 percent of the unit's total heat input, and combusting no coal or coal-derived fuel, in any year during 1998 through 2002 or, for a unit that commenced operation on or after January 1, 2003, a unit designed to combust oil for more than 10 percent of the unit's total heat input and not to combust any coal or coal-derived fuel.

(6) The term ''unit account'' means an account in the Allowance Tracking System under section 403(c) established by the Administrator for any unit under 40 CFR Sec. 73.31(a) and (b)(2002), amended as appropriate by the Administrator.

SEC. 422. APPLICABILITY.

(a) PROHIBITION.—Starting January 1, 2010, it shall be unlawful for the affected EGUs at a facility to emit a total amount of sulfur dioxide during the year in excess of the number of sulfur dioxide allowances held for such facility for that year by the owner or operator of the facility.

(b) ALLOWANCES HELD.—Only sulfur dioxide allowances under section 423 shall be held in order to meet the requirements of subsection (a), except as provided under section 425.

SEC. 423. LIMITATIONS ON TOTAL EMISSIONS.

(a) For affected EGUs for 2010 and each year thereafter, the Administrator shall allocate sulfur dioxide allowances under section 424.

TABLE A—TOTAL SO_2 ALLOWANCES ALLOCATED FOR EGUs

Year	SO_2 allowances allocated
2010	4,416,666
2011–2012	4,416,667
2013–2017	4,500,000
2018 and thereafter	3,000,000

SEC. 424. EGU ALLOCATIONS.

(a) IN GENERAL.—Not later than 36 months before the commencement date of the sulfur dioxide allowance requirement of section 422, the Administrator shall promulgate regulations determining allocations of sulfur dioxide allowances for affected EGUs for each year during 2010 and thereafter. The regulations shall provide that:

(1) 93 percent of the total amount of sulfur dioxide allowances allocated each year to fossil-fuel-fired affected EGUs under section 424 shall be allocated by the Administrator to individual EGUs in the proportion to which the number of allowances to emit sulfur dioxide allocated to such EGUs under sections 413, 415, and 416 or their predecessors in effect prior to enactment of the Clear Skies Act of 2003 based on the aggregated number of allowances to emit sulfur dioxide issue to all sources under subpart 1 of part B of this title or its predecessor in effect prior to enactment of the Clear Skies Act of 2003.

(A) The Administrator shall allocate sulfur dioxide allowances to each facility's account and each general account in the Allowance Tracking System under section 403(c) as follows:

(i) For each unit account and each general account in the Allowance Tracking System, the Administrator shall determine the total amount of sulfur dioxide allowances allocated under subpart 1 for 2010 and thereafter that are recorded, as of 12:00 noon, Eastern Standard time, on the date 180 days after enactment of the Clear Skies Act of 2003. The Administrator shall determine this amount in accordance with 40 CFR Part 73 (2002), amended as appropriate by the Administrator, except that the Administrator shall apply a discount rate of 7 percent for each year after 2010 to the amounts of sulfur dioxide allowances allocated for 2011 or later.

(ii) For each unit account and each general account in the Allowance Tracking System, the Administrator shall determine an amount of sulfur dioxide allowances equal to the allocation amount under subparagraph (A) multiplied by the ratio of the amount of sulfur dioxide allowances determined to be recorded in that account under clause (i) to the total amount of sulfur dioxide allowances determined to be recorded in all unit accounts and general accounts in the Allowance Tracking System under clause (i).

(iii) The Administrator shall allocate to each facility's account in the Allowance Tracking System an amount of sulfur dioxide allowances equal to the total amount of sulfur dioxide allowances determined under clause (ii) for the unit accounts of the units at the facility and shall allocate to each general account in the Allowance Tracking System the amount of sulfur dioxide allowances determined under clause (ii) for that general account.

(2)(A) 7 percent of the total amount of sulfur dioxide allowances allocated each year under section 423 shall be allocated for units at a facility that are affected EGUs, but did not receive sulfur dioxide allocations under subpart 1 of this title.

(B) The Administrator shall allocate each year for the units under subparagraph (A) that commenced operation before January 1, 2001, an amount of sulfur dioxide allowances determined by:

(i) For such units at the facility that are coal-fired, multiplying 0.40 lb/mmBtu by the total baseline heat input of such units and converting to tons.

(ii) For such units at the facility that are oil-fired, multiplying 0.20 lb/mmBtu by the total baseline heat input of such units and converting to tons.

(iii) For all such other units at the facility that are not covered by clause (i) or (ii), multiplying 0.05 lb/mmBtu by the total baseline heat input of such units and converting to tons.

(iv) If the total of the amounts for all facilities under clauses (i), (ii), and (iii) exceeds the allocation amount under subparagraph (A), multiplying the allocation amount under subparagraph (A) by the ratio of the total of the amounts for the facility under clauses (i), (ii), and (iii) to the total of the amounts for all facilities under clause (i), (ii), and (iii).

(v) Allocating to each facility the lesser of the total of the amounts for the facility under clauses (i), (ii), and (iii) or, if the total of the amounts for all facilities under clauses (i), (ii), and (iii) exceeds the allocation amount under subparagraph (A), the amount under clause (iv).

(C) The Administrator shall allocate each year for units under subparagraph (A) that commence commercial operation on or after January l, 2001 and before January 1, 2005, an amount of sulfur dioxide allowances determined by:

(i) For such units at the facility that are coal-fired or oil-fired, multiplying 0.19 lb/

mmBtu by the total baseline heat input of such units and converting to tons.

(ii) For all such other units at the facility that are not covered by clause (i), multiplying .005 lb/mmBtu by the total baseline heat input of such units and converting to tons.

(iii) If the total of the amounts for all facilities under clauses (i) and (ii) exceeds the allocation amount under subparagraph (A), multiplying the allocation amount under subparagraph (A) by the ratio of the total of the amounts for the facility under clauses (i) and (ii) to the total of the amounts for all facilities under clauses (i) and (ii).

(iv) Allocating to each facility the lesser of the total of the amounts for the facility under clauses (i) and (ii) or, if the total of the amounts for all facilities under clauses (i) and (ii) exceeds the allocation amount under subparagraph (A), the amount under clause (iv). The Administrator shall allocate to the facilities under paragraphs (1) and (2) on a pro rata basis (based on the allocations under those paragraphs) any unallocated allowances under this paragraph.

(D) The Administrator shall allocate each year for units under subparagraph (A) that commence commercial operation on or after January 1, 2005, an amount of sulfur dioxide allowances determined for each such unit at the facility by multiplying the applicable National Emissions Standard under section 481 by the applicable ''baseline heat input,'' considering fuel and combustion type, as defined in section 402(5)(B) and converting to tons.

(E) In the event that allocation demand exceeds supply, the Administrator shall allocate allowances under subparagraph (A) giving first priority to units qualifying under subparagraph (B), second priority to units qualifying under subparagraph (C), and third priority to units qualifying under subparagraph (D). Allowances allocated under subparagraph (D) shall be allocated to units on a first come basis determined by date of unit commencement of construction, provided that such unit actually commences operation. As such, allocations to units under paragraph (D) will not be reduced as a result of new units commencing commercial operation.

(b)(1) FAILURE TO PROMULGATE.—For each year 2010 and thereafter, if the Administrator has not promulgated regulations, determining allocations under subsection (a), each affected EGU shall comply with section 422 by providing annual notice to the permitting authority. Such notice shall indicate the amount of allowances the affected EGU believes it has for the relevant year and the amount of sulfur dioxide emissions for such year. The amount of sulfur dioxide emissions shall be determined using reasonable industry accepted methods unless the Administrator has promulgated applicable monitoring and alternative monitoring requirements.

(b)(2) Upon promulgation of regulations under subsection (a) determining the allocations for 2010 and thereafter, and promulgating regulations under section 403(b) providing for the transfer of sulfur dioxides and section 403(c) establishing an Allowance Transfer System for sulfur dioxide allowances, each unit's emissions shall be compared to and reconciled to its actual allocations under the promulgated regulations. Each unit will have nine (9) months to purchase any allowance shortfall through allowances purchased from other allowance holders or through direct sale. Any unit with an allowance excess shall be credited allowances in accordance with section 425.

SEC. 425. SULFUR DIOXIDE EARLY ACTION REDUCTION CREDITS.

(a) The Administrator shall promulgate regulations within 18 months authorizing the allocation of sulfur dioxide allowances to units designated under this section that install or modify pollution control equipment or combustion technology improvements identified in such regulations after the date of enactment of this section and prior to January 1, 2010.

(b) No allowances shall be allocated under this paragraph for emissions reductions: attributable to pollution control equipment or combustion technology improvements that were operational or under construction at any time prior to the date of enactment of this section; attributable to fuel switching; or required under any federal regulation.

(c) The allowances allocated to any unit under this paragraph shall be in addition to the allowances allocated under section 424 and shall be allocated in an amount equal to one allowance of sulfur dioxide for each 1.05 tons of reduction in emissions of sulfur dioxide achieved by the pollution control equipment or combustion technology improvements starting with the year in which the equipment or improvement is implemented. The early compliance reduction allowances available under this section shall be used and tradeable in the same manner as allowances under section 424.

(d) The Administrator shall promulgate regulations as necessary to ensure affected units receive early compliance allowance credit. Early compliance allowances shall be allocated at the end of an early compliance year. Should the Administrator fail to promulgate allocation regulations by the end of a given year, early compliance allowances for each year shall be allocated at the earliest possible time after allocation regulations are promulgated.

SEC. 426. DISPOSITION OF SULFUR DIOXIDE ALLOWANCES ALLOCATED UNDER SUBPART 1.

(a) REMOVAL FROM ACCOUNTS.—After allocating allowances under section 424(a)(1), the Administrator shall remove from the unit accounts and general accounts in the Allowance Tracking System under section 403(c) and from the Special Allowances Reserve under section 418 all sulfur dioxide allowances allocated or deposited under subpart 1 for 2010 or later.

(b) REGULATIONS.—The Administrator shall promulgate regulations as necessary to assure that the requirement to hold allowances under section 422 may be met using sulfur dioxide allowances allocated under subpart 1 for 1995 through 2009. No part of this Act shall be construed to prevent use of unused pre-2010 allowances to meet the requirements of section 422.

SEC. 427. INCENTIVES FOR SULFUR DIOXIDE EMISSION CONTROL TECHNOLOGY.

(a) RESERVE.—The Administrator shall establish a reserve of 250,000 sulfur dioxide allowances comprising 83,334 sulfur dioxide allowances for 2010, 83,333 sulfur dioxide allowances for 2011, and 83,333 sulfur dioxide allowances for 2012.

(b) APPLICATION.—Not later than 18 months after the enactment of the Clear Skies Act of 2003, an owner or operator of an affected EGU that commenced operation before 2001 and that during 2001 combusted Eastern bituminous may submit an application to the Administrator for sulfur dioxide allowances from the reserve under subsection (a). The application shall include each of the following:

(1) A statement that the owner or operator will install and commence commercial operation of specified sulfur dioxide control technology at the unit within 24 months after approval of the application under subsection (c) if the unit is allocated the sulfur dioxide allowances requested under paragraph (4). The owner or operator shall provide description of the control technology.

(2) A statement that, during the period starting with the commencement of operation of sulfur dioxide technology under paragraph (1) through 2009, the unit will combust Eastern bituminous at a percentage of the unit's total heat input equal to or exceeding the percentage of total heat input combusted by the unit in 2001 if the unit is allocated the sulfur dioxide allowances requested under paragraph (4).

(3) A demonstration that the unit will achieve, while combusting fuel in accordance with paragraph (2) and operating the sulfur dioxide control technology specified in paragraph (1), a specified tonnage of sulfur dioxide emission reductions during the period starting with the commencement of operation of sulfur dioxide control technology under subparagraph (1) through 2009. The tonnage of emission reductions shall be the difference between emissions monitored at a location at the unit upstream of the control technology described in paragraph (1) and emissions monitored at a location at the unit downstream of such control technology, while the unit is combusting fuel in accordance with paragraph (2).

(4) A request that the Administrator allocate for the unit a specified number of sulfur dioxide allowances from the reserve under subsection (a) for the period starting with the commencement of operation of the sulfur dioxide technology under paragraph (1) through 2009.

(5) A statement of the ratio of the number of sulfur dioxide allowances requested under paragraph (4) to the tonnage of sulfur dioxide emissions reductions under paragraph (3).

(c) APPROVAL OR DISAPPROVAL.—By order subject to notice and opportunity for comment, the Administrator shall—

(1) determine whether each application meets the requirements of subsection (b);

(2) list the applications meeting the requirements of subsection (b) and their respective allowance-to-emission-reduction ratios under paragraph (b)(5) in order, from lowest to highest, of such ratios;

(3) for each application listed under paragraph (2), multiply the amount of sulfur dioxide emission reductions requested by each allowance-to-emission-reduction ratio on the list that equals or is less than the ratio for the application;

(4) sum, for each allowance-to-emission-reduction ratio in the list under paragraph (2), the amounts of sulfur dioxide allowances determined under paragraph (3);

(5) based on the calculations in paragraph (4), determine which allowance-to-emission-reduction ratio on the list under paragraph (2) results in the highest total amount of allowances that does not exceed 250,000 allowances; and

(6) approve each application listed under paragraph (2) with a ratio equal to or less than the allowance-to-emission-reduction ratio determined under paragraph (5) and disapprove all the other applications.

(d) MONITORING.—An owner or operator whose application is approved under subsection (c) shall install and operate a CEMS for monitoring sulfur dioxide and to quality assure the data. The installation of the CEMS and the quality assurance of data shall be in accordance with subparagraph (a)(2)(B) and subsections (c) through (e) of section 405, except that, where two or more units utilize a single stack, and one or more units are not subject to such standards, separate monitoring shall be required for each unit.

(e) ALLOCATIONS.—Not later than 6 months after the commencement date of the sulfur dioxide allowance requirement of section 422, for the units for which applications are approved under subsection (c), the Administrator shall allocate sulfur dioxide allowances as follows:

(1) For each unit, the Administrator shall multiply the allowance-to-emission-reduction ratio of the last application that the Administrator approved under subsection (c) by the lesser of—

(A) the total tonnage of sulfur dioxide emissions reductions achieved by the unit, during the period starting with the commencement of operation of the sulfur dioxide control technology under subparagraph (b)(1) through 2009, through use of such control technology; or

(B) the tonnage of sulfur dioxide emission reductions under paragraph (b)(3).

(2) If the total amount of sulfur dioxide allowances determined for all units under paragraph (1) exceeds 250,000 sulfur dioxide allowances, the Administrator shall multiply 250,000 sulfur dioxide allowances by the ratio of the amount of sulfur dioxide allowances determined for each unit under paragraph (1) to the total amount of sulfur dioxide allowances determined for all units under paragraph (1).

(3) The Administrator shall allocate to each unit the lesser of the amount determined for that unit under paragraph (1) or, if the total amount of sulfur dioxide allowances determined for all units under paragraph (1) exceeds 250,000 sulfur dioxide allowances, under paragraph (2). The Administrator shall allocate to the facilities under section 424 paragraphs (1) and (2) on a pro rata basis (based on the allocations under those paragraphs) any unallocated allowances under this paragraph.

Subpart 3—Western Regional Air Partnership

SEC. 431. DEFINITIONS.

For purposes of this subpart—

(1) The term ''adjusted baseline heat input'' means the average annual heat input used by a unit during the three years in which the unit had the highest heat input for the period from the eighth through the fourth year before the first covered year.

(A) Notwithstanding paragraph (1), if a unit commences operation during such period and—

(i) on or after January 1 of the fifth year before the first covered year, then ''adjusted baseline heat input'' shall mean the average annual heat input used by the unit during the fifth and fourth years before the first covered year; and

(ii) on or after January 1 of the fourth year before the first covered year, then ''adjusted baseline heat input'' shall mean the annual heat input used by the unit during the fourth year before the first covered year.

(B) A unit's heat input for a year shall be the heat input—

(i) required to be reported under section 405 for the unit, if the unit was required to report heat input during the year under that section;

(ii) reported to the Energy Information Administrator for the unit, if the unit was not required to report heat input under section 405;

(iii) based on data for the unit reported to the WRAP State where the unit is located as required by State law, if the unit was not required to report heat input during the year under section 405 and did not report to the Energy Information Administration; or

(iv) based on fuel use and fuel heat content data for the unit from fuel purchase or use records, if the unit was not required to report heat input during the year under section 405 and did not report to the Energy Information Administration and the WRAP State.

(2) The term ''affected EGU'' means an affected EGU under subpart 2 that is in a WRAP State and that—

(A) in 2000, emitted 100 tons or more of sulfur dioxide and was used to produce electricity for sale; or

(B) in any year after 2000, emits 100 tons or more of sulfur dioxide and is used to produce electricity for sale.

(3) The term ''coal-fired'' with regard to a unit means, for purposes of section 434, a unit combusting coal or any coal-derived fuel alone or in combination with any amount of any other fuel in any year during the period from the eighth through the fourth year before the first covered year.

(4) The term ''covered year'' means—

(A)(i) the third year after the year 2018 or later when the total annual sulfur dioxide emissions of all affected EGUs in the WRAP States first exceed 271,000 tons; or

(ii) the third year after the year 2013 or later when the Administrator determines by regulation that the total annual sulfur dioxide emissions of all affected EGUs in the WRAP States are reasonably projected to exceed 271,000 tons in 2018 or any year thereafter. The Administrator may make such determination only if all the WRAP States submit to the Administrator a petition requesting that the Administrator issue such determination and make all affected EGUs in the WRAP States subject to the requirements of sections 432 through 434; and

(B) each year after the ''covered year'' under subparagraph (A).

(5) The term ''oil-fired'' with regard to a unit means, for purposes of section 434, a unit combusting fuel oil for more than 10 percent of the unit's total heat input, and combusting no coal or coal-derived fuel, and any year during the period from the eighth through the fourth year before the first covered year.

(6) The term ''WRAP State'' means Arizona, California, Colorado, Idaho, Nevada, New Mexico, Oregon, Utah, and Wyoming.

SEC. 432. APPLICABILITY.

(a) PROHIBITION.—Starting January 1 of the first covered year, it shall be unlawful for the affected EGUs at a facility to emit a total amount of sulfur dioxide during the year in excess of the number of sulfur dioxide allowances held for such facility for that year by the owner or operator of the facility.

(b) ALLOWANCES HELD.—Only sulfur dioxide allowances under section 433 shall be held in order to meet the requirements of subsection (a).

SEC. 433. LIMITATIONS ON TOTAL EMISSIONS.

For affected EGUs, the total amount of sulfur dioxide allowances that the Administrator shall allocate for each covered year under section 434 shall equal 271,000 tons.

SEC. 434. EGU ALLOCATIONS.

(a) IN GENERAL.—By January 1 of the year before the first covered year, the Administrator shall promulgate regulations determining, for each covered year, the allocations of sulfur dioxide allowances for the units at a facility that are affected EGUs as of December 31 of the fourth year before the covered year by—

(1) for such units at the facility that are coal-fired, multiplying 0.40 lb/mmBtu by the total adjusted baseline heat input of such units and converting to tons;

(2) for such units at the facility that are oil-fired, multiplying 0.20 lb/mmBtu by the total adjusted baseline heat input of such units and converting to tons;

(3) for all such other units at the facility that are not covered by paragraph (1) or (2) multiplying 0.05 lb/mmBtu by the total adjusted baseline heat input of such units and converting to tons; and

(4) multiplying by 0.95 the allocation amount under section 433 by the ratio of the total of the amounts for the facility under paragraphs (1), (2), and (3) to the total of the amounts for all facilities under paragraphs (1), (2), and (3); and

(5)(A) 5 percent of the total amount of sulfur dioxide allowances allocated each year under section 433 shall be allocated for units at a facility that are affected EGUs, but did not receive sulfur dioxide allocations under paragraph (4). These units shall be allocated allowances in accordance with paragraphs (1), (2), and (3).

(B) Allowances allocated under subparagraph (A) shall be allocated to units on a first come basis determined by date of unit commencement of construction, provided that such unit actually commences operation. As such, allocations to units under paragraph (A) will not be reduced as a result of new units commencing commercial operation.

(C) Allowances not allocated under subparagraph (B) shall be allocated to units in paragraphs (A) and (B) on a pro rata basis.

(b)(1) FAILURE TO PROMULGATE.—For each year 2010 and thereafter, if the Administrator has not promulgated regulations, determining allocations under paragraph (a), each affected EGU shall comply with section 422 by provided annual notice to the permitting authority. Such notice shall indicate the amount of allowances the affected EGU believes it has for the relevant year and the amount of sulfur dioxide emissions for such year. The amount of sulfur dioxide emissions shall be determined using reasonable industry accepted methods unless the Administrator has promulgated applicable monitoring and alternative monitoring requirements.

(2) Upon promulgation of regulations under subsection (a) determining the allocations for 2010 and thereafter, and promulgating regulations under section 403(b) providing for the transfer of sulfur dioxides and section 403(c) establishing an Allowance Transfer System for sulfur dioxide allowances, each unit's emissions shall be compared to and reconciled to its actual allocations under the promulgated regulations. Each unit will have nine (9) months to purchase any allowance shortfall through allowances purchased from other allowance holders or through direct sale. Any unit with an allowance excess shall be credited allowances in accordance with section 435.

SEC. 435. WRAP EARLY ACTION REDUCTION CREDITS

(a) The Administrator shall promulgate regulations within 18 months authorizing the allocation of sulfur dioxide allowances to units designated under this section that install or modify pollution control equipment or combustion technology improvements identified in such regulations after the date of enactment of this section and prior to January 1, 2010.

(b) No allowances shall be allocated under this paragraph for emissions reductions: attributable to pollution control equipment or combustion technology improvements that were operational or under construction at any time prior to the date of enactment of this section; attributable to fuel switching; or required under any federal regulation.

(c) The allowances allocated to any unit under this paragraph shall be in addition to the allowances allocated under section 434 and shall be allocated in an amount equal to one allowance of sulfur dioxide for each 1.05 tons of reduction in emissions of sulfur dioxide achieved by the pollution control equipment or combustion technology improvements starting with the year in which the equipment or improvement is implemented. The early compliance reduction allowances available under this section shall be used and tradeable in the same manner as allowances under section 434.

(d) The Administrator shall promulgate regulations as necessary to ensure affected units receive early compliance allowance credit. Early compliance allowances shall be allocated at the end of an early compliance

year. Should the Administrator fail to promulgate allocation regulations by the end of a given year, early compliance allowances for each year shall be allocated at the earliest possible time after allocation regulations are promulgated.

PART C—NITROGEN OXIDES CLEAR SKIES EMISSION REDUCTIONS

Subpart 1—Acid Rain Program

SEC. 441. NITROGEN OXIDES EMISSION REDUCTION PROGRAM.

(a) APPLICABILITY.—On the date that a coal-fired utility unit becomes an affected unit pursuant to sections 413 or 414, or on the date a unit subject to the provisions of section 413(d), must meet the NO_X reduction requirements, each such unit shall become an affected unit for purposes of this section and shall be subject to the emission limitations for nitrogen oxides set forth herein.

(b) EMISSION LIMITATIONS.—(1) The Administrator shall by regulation establish annual allowable emission limitations for nitrogen oxides for the types of utility boilers listed below, which limitations shall not exceed the rates listed below: *Provided,* That the Administrator may set a rate higher than that listed for any type of utility boiler if the Administrator finds that the maximum listed rate for that boiler type cannot be achieved using low NO_X burner technology. The Administrator shall implement this paragraph under 40 CFR Part 76.5 (2002). The maximum allowable emission rates are as follows:

(A) for tangentially fired boilers, 0.45 lb/mmBtu; and

(B) for dry bottom wall-fired boilers (other than units applying cell burner technology), 0.50 lb/mmBtu. After January 1, 1995, it shall be unlawful for any unit that is an affected unit on that date and is of the type listed in this paragraph to emit nitrogen oxides in excess of the emission rates set by the Administrator pursuant to this paragraph.

(2) The Administrator shall, by regulation, establish allowable emission limitations on a lb/mmBtu, annual average basis, for nitrogen oxides for the following types of utility boilers:

(A) wet bottom wall-fired boilers;

(B) cyclones;

(C) units applying cell burner technology; and

(D) all other types of utility boilers.

The Administrator shall base such rates on the degree of reduction achievable through the retrofit application of the best system of continuous emission reduction, taking into account available technology, costs and energy and environmental impacts; and which is comparable to the costs of nitrogen oxides controls set pursuant to subsection (b)(1). The Administrator may revise the applicable emission limitations for tangentially fired and dry bottom, wall-fired boilers (other than cell burners) to be more stringent if the Administrator determines that more effective low NOx burned technology is available: *Provided*, That, no unit that is an affected unit pursuant to section 413 and that is subject to the requirements of subsection (b)(1), shall be subject to the revised emission limitations, if any. The Administrator shall implement that paragraph under 40 C.F.R. Parts 76.6 and 76.7 (2002).

(c) ALTERNATIVE EMISSION LIMITATIONS.—(1) The permitting authority shall, upon request of an owner or operator of a unit subject to this section, authorize an emission limitation less stringent than the applicable limitation established under subsection (b)(1) or (b)(2) upon a determination that—

(A) a unit subject to subsection (b)(1) cannot meet the applicable limitation using low NOx burner technology; or

(B) a unit subject to subsection (b)(2) cannot meet the applicable rate using the technology on which the Administrator based the applicable emission limitation.

(2) The permitting authority shall base such determination upon a reasonable showing satisfactory to the permitting authority, in accordance with regulations established by the Administrator, that the owner or operator—

(A) has properly installed appropriate control equipment designed to meet the applicable emission rate;

(B) has properly operated such equipment for a period of 15 months (or such other period of time as the Administrator determines through the regulations), and provides operating and monitoring data for such period demonstrating that the unit cannot meet the applicable emission rate; and

(C) has specified an emission rate that such unit can meet on an annual average basis. The permitting authority shall issue an operating permit for the unit in question, in accordance with section 404 and title V—

(i) that permits the unit during the demonstration period referred to in subparagraph (B), to emit at a rate in excess of the applicable emission rate;

(ii) at the conclusion of the demonstration period to revise the operating permit to reflect the alternative emission rate demonstrated in subparagraphs (B) and (C).

(3) Units subject to subsection (b)(1) for which an alternative emission limitation is established shall not be required to install any additional control technology beyond low NOx burners. Nothing in this section shall preclude an owner or operator from installing and operating an alternative NOx control technology capable of achieving the applicable emission limitation. The Administrator shall implement this subsection under 40 C.F.R. Part 76 (2002), amended as appropriate by the Administrator.

(d) EMISSIONS AVERAGING.—

(1) In lieu of complying with the applicable emission limitations under subsection (b)(1), (2), or (c), the owner or operator of two or more units subject to one or more of the applicable emission limitations set pursuant to these sections, may petition the permitting authority for alternative contemporaneous annual emission limitations for such units that ensure that—

(A) the actual annual emission rate in pounds of nitrogen oxides per million Btu averaged over the units in question is a rate that is less than, or equal to,

(B) the Btu-weighted average annual emission rate for the same units if they had been operated, during the same period of time, in compliance with limitations set in accordance with the applicable emission rates set pursuant to subsections (b)(1) and (2).

(2) If the permitting authority determines, in accordance with regulations issued by the Administrator that the conditions in paragraph (1) can be met, the permitting authority shall issue operating permits for such units, in accordance with section 404 and title V, that allow alternative contemporaneous annual emission limitations. Such emission limitations shall only remain in effect while both units continue operation under the conditions specified in their respective operating permits. The Administrator shall implement this subsection under 40 C.F.R. Part 76 (2002), amended as appropriate by the Administrator.

SEC. 442. TERMINATION.

Starting January 1, 2008, the owner or operator of affected units and affected facilities under section 441 shall no longer be subject to the requirements of that section.

Subpart 2—Clear Skies Nitrogen Oxides Allowance Program

SEC. 451. DEFINITIONS.

For purposes of this subpart:

(1) The term ''affected EGU'' means—

(A) for a unit serving a generator before the date of enactment of the Clear Skies Act of 2003, a unit in a State serving a generator with a nameplate capacity of greater than 25 megawatts that produced or produces electricity for sale during 2002 or any year thereafter, except for a cogeneration unit that meets the criteria for qualifying for a cogeneration facility codified in Section 292.205 of Title 18 of the Code of Federal Regulations as issued on April 1, 2002 during 2002 and each year thereafter; and

(B) for a unit commencing service of a generator on or after the date of enactment of the Clear Skies Act of 2003, a unit in a State serving a generator that produces electricity for sale during any year starting with the year the unit commences service of a generator, except for a gas-fired unit serving one or more generators with total nameplate capacity of 25 megawatts or less, or a cogeneration unit that meets the criteria for qualifying for a cogeneration facility codified in Section 292.205 of Title 18 of the Code of Federal Regulations as issued on April 1, 2002, during each year starting when the unit commences service of a generator.

(C) Notwithstanding paragraphs (A) and (B), the term ''affected EGU'' does not include a solid waste incineration unit subject to section 129 or a unit for the treatment, storage, or disposal of hazardous waste subject to section 3005 of the Solid Waste Disposal Act.

(2) The term ''adjusted baseline heat input'' with regard to a unit means, for purposes of allocating nitrogen oxides allowances in a particular year under this subpart, the units baseline multiplied by—

(A) 1.0 for affected coal-fired units for 2008 and each year thereafter;

(B) 0.55 for affected oil- and gas-fired units located in a Zone 1 State for years 2008 through 2017 inclusive;

(C) 0.8 for affected oil- and gas-fired units located in a Zone 1 State for 2018 and each year thereafter; and

(D) 0.4 for affected oil- and gas-fired units located in a Zone 2 State for 2008 and each year thereafter.

(3) The term ''allowable nitrogen oxides emissions rate'' means the most stringent federally enforceable emissions limitation for nitrogen oxides that applies to the unit as of date of enactment of this subpart. If the emissions limitation for a unit is not expressed in pounds of emissions per million Btu, or the averaging period of that emissions limitation is not expressed on an annual basis, the Administrator shall calculate the annual equivalent of that emissions limitation to establish the allowable rate. Such limitation shall not include any requirement to hold nitrogen oxides allowances under the federal NOx Budget Trading Program as codified at 40 C.F.R. Part 97 (2002), or any State program adopted to meet the requirements of the NO_X SIP Call as codified at 40 C.F.R. 51.121 (2002).

(4) The term ''Zone 1 State'' means Alabama, Arkansas, Connecticut, Delaware, the District of Columbia, Florida, Georgia, Illinois, Indiana, Iowa, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Mississippi, the fine grid portion of Missouri, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas east of Interstate 35, Vermont, Virginia, West Virginia, and Wisconsin.

(5) The term ''Zone 2 State'' means Alaska, American Samoa, Arizona, California, Colorado, the Commonwealth of the Northern Mariana Islands, the Commonwealth of Puerto Rico, Guam, Hawaii, Idaho, Kansas, Minnesota, the coarse grid portion of Missouri, Montana, Nebraska, North Dakota, New

Mexico, Nevada, Oklahoma, Oregon, South Dakota, Texas west of Interstate 35, Utah, the Virgin Islands, Washington, and Wyoming.

SEC. 452. APPLICABILITY.

(a) ZONE 1 PROHIBITION.—(1) Starting January 1, 2008, it shall be unlawful for the affected EGUs at a facility in a Zone 1 State to emit a total amount of nitrogen oxides during a year in excess of the number of nitrogen oxides allowances held for such facility for that year by the owner or operator of the facility.

(2) Only nitrogen oxides allowances under section 453(a) shall be held in order to meet the requirements of paragraph (1), except as provided under section 465.

(b) ZONE 2 PROHIBITION.—(1) Starting January 1, 2008, it shall be unlawful for the affected EGUs at a facility in a Zone 2 State to emit a total amount of nitrogen oxides during a year in excess of the number of nitrogen oxides allowances held for such facility for that year by the owner or operator of the facility.

(2) Only nitrogen oxides allowances under section 453(b) shall be held in order to meet the requirements of paragraph (1).

SEC. 453. LIMITATIONS ON TOTAL EMISSIONS.

(a) ZONE 1 ALLOCATIONS.—For affected EGUs in the Zone 1 States for 2008 and each year thereafter, the Administrator shall allocate nitrogen oxides allowances under section 454(a) as specified in Table A.

TABLE A.—TOTAL NO_X ALLOWANCES ALLOCATED FOR EGUs IN ZONE 1

Year	NO_X allowances allocated
2008–2017	1,473,603
2018 and thereafter	1,073,603

(b) ZONE 2 ALLOCATIONS.—For affected EGUs in the Zone 2 States for 2008 and each year thereafter, the Administrator shall allocate nitrogen oxides allowances under section 454(b) as specified in Table B.

TABLE B.—TOTAL NOx ALLOWANCES ALLOCATED FOR EGUs IN ZONE 2

Year	NO_X allowance allocated
2008 and thereafter	714,794

SEC. 454. EGU ALLOCATIONS.

(a) EGU ALLOCATIONS IN THE ZONE 1 STATES.—

(1) EPA REGULATIONS.—Not later than 18 months before commencement date of the nitrogen oxides allowance requirement of section 452, the Administrator shall promulgate regulations determining the allocation of nitrogen oxides allowances for 2008 and each subsequent year for units at a facility in a Zone 1 State that are affected EGUs as of the date of enactment of this section.

(A) The regulations shall determine the allocation for such units for each year and future year by multiplying by 0.95 the allocation amount under section 453(a) by the ratio of the total amount of the adjusted baseline heat input of such units at the facility to the total amount of adjusted baseline heat input to all affected EGUs in the Zone 1 States. However, the regulations shall not allocate allowances to any affected unit in excess of the product of the unit's baseline heat input multiplied by the unit's allowable nitrogen oxides emissions rate, divided by 2000.

(B) 5 percent of the total amount of nitrogen oxides allowances allocated each year under section 453 shall be allocated for units at a facility that are affected EGUs, but did not receive nitrogen oxides allocations under paragraph (A). These units shall be allocated allowances for each year by multiplying the allocation amount under section 453(a) by the ratio of the total amount of the adjusted baseline heat input of such units at the facility to the total amount of adjusted baseline heat input to all affected EGUs in the Zone 1 States, including those covered in (A). However, the regulations shall not allocate allowances to any affected unit in excess of the product of the unit's baseline heat input multiplied by the unit's allowable nitrogen oxides emissions rate, divided by 2000.

(C) Allowances allocated under subparagraph (B) shall be allocated to units on a first come basis determined by date of unit commencement of construction, provided that such unit actually commences operation. As such, allocations to units under paragraph (B) will not be reduced as a result of new units commencing commercial operation.

(D) Allowances not allocated under subparagraph (B) shall be allocated to units in paragraphs (A) and (B) on a pro rata basis.

(E) For each year 2008 and thereafter, if the Administrator has not promulgated the regulations determining allocation under subsection (a):

(i) each affected unit shall comply with section 452 by providing annual notice to the permitting authority. Such notice shall indicate the amount of allowances the affected unit believes it has for the relevant year and the amount of nitrogen oxide emissions for such year. The amount of nitrogen oxide emissions shall be determined using reasonable industry accepted methods unless the Administrator has promulgated applicable monitoring and alternative monitoring requirements; and

(ii) Upon promulgation of regulations under subsection (a) for Zone 1 determining the allocations for 2008 and thereafter, and promulgating regulations under section 403(b) providing for the transfer of nitrogen oxides and section 403(c) establishing an Allowance Transfer System for nitrogen oxide allowances, each unit's emissions shall be compared to and reconcile its actual allocations under the promulgated regulations. Each unit will have nine (9) months to submit allowances to the Administrator, without recompense, for any allowances shortfall. The submitted allowances may have been obtained and held by any mechanism consistent with this Act including, but not limited to, direct sale. Any unit with an allowance excess shall be credited allowances in accordance with section 455.

(b) EGU ALLOCATIONS IN THE ZONE 2 STATES.—

(1) EPA REGULATIONS.—Not later than 18 months before the commencement date of the nitrogen oxides allowance requirement of section 452, the Administrator shall promulgate regulations determining the allocation of nitrogen oxides allowances for 2008 and each subsequent year for units at a facility in a Zone 2 State that are affected EGUs as of the date of enactment of this section.

(A) The regulations shall determine the allocation for such units for each year by multiplying by 0.95 the allocation amount under section 453(b) by the ratio of the total amount of the adjusted baseline heat input of such units at the facility to the total amount of the adjusted baseline heat input to all affected EGUs in the Zone 2 States. However, the regulations shall not allocate allowances to any affected unit in excess of the product of the unit's baseline heat input multiplied by the unit's allowable nitrogen oxides emissions rate, divided by 2000.

(B) 5 percent of the total amount of nitrogen oxides allowances allocated each year under section 453 shall be allocated for units at a facility that are affected EGUs, but did not receive nitrogen oxides allocations under paragraph (A). These units shall be allocated allowances for each year by multiplying the allocation amount under section 453(a) by the ratio of the total amount of the adjusted baseline heat input of such units at the facility to the total amount of adjusted baseline heat input to all affected EGUs in the Zone 2 States, including those covered in (A). However, the regulations shall not allocate allowances to any affected unit in excess of the product of the unit's baseline heat input multiplied by the unit's allowable nitrogen oxides emissions rate, divided by 2000.

(C) Allowances allocated under subparagraph (B) shall be allocated to units on a first come basis determined by date of unit commencement of construction, provided that such unit actually commences operation. As such, allocations to units under subparagraph (B) will not be reduced as a result of new units commencing commercial operation.

(D) Allowances not allocated under subparagraph (B) shall be allocated to units in paragraphs (A) and (B) on a pro rata basis.

(E) For each year 2008 and thereafter, if the Administrator has not promulgated the regulations determining allocation under subsection (a):

(i) each affected unit shall comply with section 452 by providing annual notice to the permitting authority. Such notice shall indicate the amount of allowances the affected unit believes it has for the relevant year and the amount of nitrogen oxide emissions for such year. The amount of nitrogen oxide emissions shall be determined using reasonable industry accepted methods unless the Administrator has promulgated applicable monitoring and alternative monitoring requirements; and

(ii) Upon promulgation of regulations under subsection (b) for Zone 2 determining the allocations for 2008 and thereafter, and promulgating regulations under section 403(b) providing for the transfer of nitrogen oxides and section 403(c) establishing an Allowance Transfer System for nitrogen oxide allowances, each unit's emissions shall be compared to and reconcile with its actual allocations under the promulgated regulations. Each unit will have nine (9) months to submit allowances to the Administrator, without recompense, for any allowance shortfall. The submitted allowances may have been obtained and held by any mechanism consistent with this Act including, but not limited to, direct sale. Any unit with an allowance excess shall be credited allowances in accordance with section 455.

SEC. 455 NITROGEN OXIDES EARLY ACTION REDUCTION CREDITS.

(a) The Administrator shall promulgate regulations within 18 months authorizing the allocation of nitrogen oxides allowances to units designated under this section that install or modify pollution control equipment or combustion technology improvements identified in such regulations after the date of enactment of this section and prior to January l, 2010.

(b) No allowances shall be allocated under this paragraph for emissions reductions: attributable to pollution control equipment or combustion technology improvements that were operational or under construction at any time prior to the date of enactment of this section; attributable to fuel switching; or required under any federal regulation.

(c) The allowances allocated to any unit under this paragraph shall be in addition to the allowances allocated under section 454 and shall be allocated in an amount equal to one allowance of nitrogen oxides for each 1.05 tons of reduction in emissions of nitrogen oxides achieved by the pollution control equipment or combustion technology improvements starting with the year in which

the equipment or improvement is implemented. The early compliance reduction allowances available under this section shall be used and tradeable in the same manner as allowances under section 454.

(d) The Administrator shall promulgate regulations as necessary to ensure affected units receive early compliance allowance credit. Early compliance allowances shall be allocated at the end of an early compliance year. Should the Administrator fail to promulgate allocation regulations by the end of a given year, early compliance allowances for each year shall be allocated at the earliest possible time after allocation regulations are promulgated.

Subpart 3—Ozone Season NOx Budget Program

SEC. 461. DEFINITIONS.

For purposes of this subpart:

(1) The term ''ozone season'' means—

(A) with regard to Connecticut, Delaware, the District of Columbia, Maryland, Massachusetts, New Jersey, New York, Pennsylvania, and Rhode Island, the period May 1 through September 30 for each year starting in 2003; and

(B) with regard to all other States, the period May 1 through September 30, for each year starting in 2004 and thereafter.

(2) The term ''non-ozone season'' means

(A) with regard to Connecticut, Delaware, the District of Columbia, Maryland, Massachusetts, New Jersey, New York, Pennsylvania, and Rhode Island, the period October 1 through April 30 and

(B) with regard to all other States, the period October 1, 2003, through May 29, 2004 and the period October 1 through April 30 beginning in the year 2004 and for each year thereafter.

(3) The term ''NOx SIP Call State'' means Connecticut, Delaware, the District of Columbia, Illinois, Indiana, Kentucky, Maryland, Massachusetts, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Virginia, and West Virginia and the fine grid portions of Alabama, Georgia, Michigan, and Missouri.

(4) The term ''fine grid portions of Alabama, Georgia, Michigan, and Missouri'' means the areas in Alabama, Georgia, Michigan, and Missouri subject to 40 C.F.R. Part 51.121 (2001).

SEC. 462. GENERAL PROVISIONS.

The provisions of sections 402 through 406 shall not apply to this subpart.

SEC. 463. APPLICABLE IMPLEMENTATION PLAN.

(a) SIPS.—Except as provided in subsection (b), the applicable implementation plan for each NOx SIP Call State shall be consistent with the requirements, including the NOx SIP Call State's nitrogen oxides budget and compliance supplement pool, in 40 C.F.R. Part 51.121 and 51.122 (2001)

(b) REQUIREMENTS.—Notwithstanding any provision to the contrary in 40 C.F.R. Part 51.121 and 51.122 (2001),

(1) the applicable implementation plan for each NOx SEP Call State shall require full implementation of the required emission control measures starting no later than the first ozone season; and

(2) starting January 1, 2008—

(A) the owners and operators of a boiler, combustion turbine, or integrated gasification combined cycle plant subject to emission reduction requirements or limitations under part B, C, or D shall not longer be subject to the requirements in a NO_X SIP Call State's applicable implementation plan that meet the requirements of subsection (a) and paragraph (1); and

(B) notwithstanding subparagraph (A), if the Administrator determines, by December 31, 2007, that a NO_X SIP Call State's applicable implementation plan meets the requirements of subsection (a) and paragraph (1), such applicable implementation plan shall be deemed to continue to meet such requirements; and

(3)(A) The owner or operator or designated representative of a boiler, combustion turbine, or combined cycle system may submit to the Administrator a petition to allow use of nitrogen oxides allowances allocated for 2005 to meet the applicable requirement to hold nitrogen oxides allowances at least equal to 2004 ozone season emissions of such boiler, combustion turbine, or combined cycle system.

(B) A petition under this paragraph shall be submitted to the Administrator by February 1, 2004.

(C) The petition shall demonstrate that the owner or operator made reasonable efforts to install, at the boiler, combustion turbine, or combined cycle system, nitrogen oxides control technology designed to allow the owner or operator to meet such requirement to hold nitrogen oxides allowances.

(D) The petition shall demonstrate that there is an undue risk for the reliability of electricity supply (taking into account the feasibility of purchasing electricity or nitrogen oxides allowances) because—

(i) the owner or operator is not likely to be able to install and operate the technology under subparagraph (C) on a timely basis; or

(ii) the technology under subparagraph (C) is not likely to be able to achieve its design control level on a timely basis.

(E) The petition shall include a statement by the NO_X SIP Call State where the boiler, combustion turbine, or combined cycle system is located that the NO_X SIP Call State does not object to the petition.

(F) By May 30, 2004, by order, the Administrator shall approve the petition if it meets the requirements of subparagraphs (B) through (E).

(c) SAVINGS PROVISION.—Nothing in this section or section 464 shall preclude or deny the right of any State or political subdivision thereof to adopt or enforce any regulation, requirement, limitation, or standard, relating to a boiler, combustion turbine, or integrated gasification combined cycle plant subject to emission reduction requirements or limitations under part B, C, or D, that is more stringent than a regulation, requirement, limitation, or standard in effect under this section or under any other provision of this Act.

SEC. 464. TERMINATION OF FEDERAL ADMINISTRATION OF NO_X TRADING PROGRAM FOR EGUS.

Starting January 1, 2008, with regard to any boiler, combustion turbine, or integrated gasification combined cycle plant subject to emission reduction requirements or limitations under part B, C, or D, the Administrator shall not administer any nitrogen oxides trading program included in any NO_X SIP Call State's applicable implementation plan and meeting the requirements of section 463(a) and (b)(1).

SEC. 465. CARRYFORWARD OF PRE–2008 NITROGEN OXIDES ALLOWANCES.

The Administrator shall promulgate regulations as necessary to assure that the requirement to hold allowances under section 452(a)(1) may be met using nitrogen oxides allowances allocated for an ozone season before 2008 under a nitrogen oxides trading program that the Administrator administers, is included in a NO_X SIP Call State's applicable implementation plan, and meets the requirements of section 463(a) and (b)(1).

SEC. 466. NON-OZONE SEASON VOLUNTARY ACTION CREDITS

An affected facility that voluntarily elects to operate selective catalytic reduction (SCR) units, installed prior to enactment of this title, during the non-ozone season under section 461(2) shall be credited 0.5 allowances per ton of NO_X emissions avoided as a result of operating these controls. The amount avoided will equal every ton of nitrogen oxides reduction below the allowable emission rate. The Administrator shall determine if any other existing NO_X emission control devices are generally uneconomic to operate unless EGUs are provided incentives to control NO_X emissions during the non-ozone season. If the Administrator finds that incentives using different control equipment are necessary to make the operation of these devices economic, the Administrator shall specify these types of control devices and, for an affected facility with these specified devices, installed prior to enactment of this title, that voluntarily elects to operate these devices during the nonozone season under section 461(2) shall be credited 0.5 allowances per ton of emissions avoided as a result of operating these controls. The Administrator shall promulgate regulations as necessary to establish this NO_X allowance credit program. Failure of the Administrator to promulgate implementing regulations prior to voluntary reductions being undertaken by affected facilities shall not in any manner reduce the number of allowances an otherwise qualifying facility shall be credited upon promulgation of the regulations.

PART D—MERCURY EMISSIONS REDUCTIONS

SEC. 471. DEFINITIONS.

For purposes of this part:

(1) The term ''adjusted baseline heat input'' with regard to a unit means the unit's baseline heat input multiplied by—

(A) 1.0, for the portion of the baseline heat input that is the unit's average annual combustion of bituminous during the years on which the unit's baseline heat input is based;

(B) 3.0, for the portion of the baseline heat input that is the unit's average annual combustion of lignite during the years on which the unit's baseline heat input is based;

(C) 1.25, for the portion of the baseline heat input that is the unit's average annual combustion of subbituminous during the years on which the unit's baseline heat input is based; and

(D) 1.0, for the portion of the baseline heat input that is not covered by subparagraph (A), (B), or (C) or for the entire baseline heat input if such baseline heat input is not based on the unit's heat input in specified years.

(2) The term ''affected EGU'' means—

(A) for a unit serving a generator before the date of enactment of the Clear Skies Act of 2003, a coal-fired unit in a State serving a generator with a nameplate capacity of greater than 25 megawatts that produced or produces electricity for sale during 2002 or any year thereafter, except for a cogeneration unit meets the criteria for qualifying for a cogeneration facilities codified in Section 292.205 of Title 18 of the Code of Federal Regulations as issued on April 1, 2002 during 2002 and each year thereafter; and

(B) for a unit commencing service of a generator on or after the date of enactment of the Clear Skies Act of 2003, a coal-fired unit in a State serving a generator that produces electricity for sale during any year starting with the year the unit commences service of a generator, except for a cogeneration unit that meets the criteria for qualifying for a cogeneration facilities codified in Section 292.205 of Title 18 of the Code of Federal Regulations as issued on April 1, 2002, during each year starting with the year the unit commences service of a generator.

(C) Notwithstanding paragraphs (A) and (B), the term ''affected EGU'' does not include a solid waste incineration unit subject to section 129, a unit for the treatment, storage, or disposal of hazardous waste subject

to section 3005 of the Solid Waste Disposal Act, or a unit with de minimus emissions equal to or less than 50 pounds on an annual basis.

SEC. 472. APPLICABILITY.

Starting January 1, 2010, it shall be unlawful for the affected EGUs at a facility in a State to emit a total amount of mercury during the year in excess of the number of mercury allowances held for such facility for that year by the owner or operator of the facility.

SEC. 473. LIMITATIONS ON TOTAL EMISSIONS.

For affected EGUs for 2010 and each year thereafter, the Administrator shall allocate mercury allowances pursuant to section 474.

TABLE A.—TOTAL MERCURY ALLOWANCES ALLOCATED FOR EGUS

Year	Mercury allowances allocated
2010–2017	1,088,000
2018 and thereafter	480,000

SEC. 474. EGU ALLOCATIONS.

(a)(1) IN GENERAL.—Not later than 24 months before the commencement date of the mercury allowance requirement of section 472, the Administrator shall promulgate regulations determining allocations of mercury allowances for 2010 and thereafter for units at a facility that commence commercial operation by and are affected EGUs as of date of enactment. The regulations shall provide that the Administrator shall allocate each year for such units an amount determined by multiplying by 0.95 the allocation amount in section 473 by the ratio of the total amount of the adjusted baseline heat input of such units at the facility to the total amount of adjusted baseline heat input of all affected EGUs.

(2) 5 percent of the total amount of nitrogen oxides allowances allocated each year under section 473 shall be allocated for units at a facility that commence commercial operation and are affected EGUs after the date of enactment. These units shall be allocated allowances for each year by multiplying the allocation amount under section 473 by the ratio of the total amount of the adjusted baseline heat input of such units at the facility to the total amount of adjusted baseline heat input to all affected EGUs, including those covered in paragraph (1). However, the regulations shall not allocate allowances to any affected unit in excess of the product of the unit's baseline heat input multiplied by the unit's allowable mercury emissions rate, divided by 2000.

(3) Allowances allocated under paragraph (2) shall be allocated to units on a first come basis determined by date of unit commencement of construction, provided that such unit actually commences commercial operation. As such, allocations to units under paragraph (2) will not be reduced as a result of new units commencing commercial operation.

(4) Allowances not allocated under paragraph (2) shall be allocated to units in paragraphs (1) and (2) on a pro rata basis.

(5) For each year 2010 and thereafter, if the Administrator has not promulgated the regulations determining allocation under subsection (a):

(i) each affected unit shall comply with section 472 by providing annual notice to the permitting authority. Such notice shall indicate the amount of allowances the affected unit believes it has for the relevant year and the amount of mercury emissions for such year. The amount of mercury emissions shall be determined using reasonable industry accepted methods unless the Administrator has promulgated applicable monitoring and alternative monitoring requirements; and

(ii) upon promulgation of regulations under subsection (a) determining the allocations for 2010 and thereafter, and promulgating regulations under section 403(b) providing for the transfer of mercury allowances and section 403(c) establishing an Allowance Transfer System for mercury allowances, each unit's emissions shall be compared to and reconcile with its actual allocations under the promulgated regulation. Each unit will have nine (9) months to submit allowances to the Administrator, without recompense, for any allowances shortfall. The submitted allowances may have been obtained and held by any mechanism consistent with the Act including, but not limited to, direct sale. Any unit with an allowance excess shall be credited allowances in accordance with section 475.

SEC. 475. MERCURY EARLY ACTION REDUCTION CREDITS.

(a) The Administrator shall promulgate regulations within 18 months authorizing the allocation of nitrogen oxides allowances to units designated under this section that install or modify pollution control equipment or combustion technology improvements identified in such regulations after the date of enactment of this section and prior to January 1, 2010.

(b) No allowances shall be allocated under this paragraph for emissions reductions: attributable to pollution control equipment or combustion technology improvements that were operational or under construction at any time prior to the date of enactment of this section; attributable to fuel switching; or required under any federal regulation.

(c) The allowances allocated to any unit under this paragraph shall be in addition to the allowances allocated under section 474 and shall be allocated in an amount equal to one allowance of mercury for each 1.05 tons of reduction in emissions of mercury achieved by the pollution control equipment or combustion technology improvements starting with the year in which the equipment or improvement is implemented. The early compliance reduction allowances available under this section shall be used and tradeable in the same manner as allowances under section 474.

(d) The Administrator shall promulgate regulations as necessary to ensure affected units receive early compliance allowance credit. Early compliance allowances shall be allocated at the end of an early compliance year. Should the Administrator fail to promulgate allocation regulations by the end of a given year, early compliance allowances for each year shall be allocated at the earliest possible time after allocation regulations are promulgated.

PART E—NATIONAL EMISSION STANDARDS; RESEARCH, ENVIRONMENTAL ACCOUNTABILITY; MAJOR SOURCE PRECONSTRUCTION REVIEW AND BEST AVAILABLE RETROFIT CONTROL TECHNOLOGY REQUIREMENTS

SEC. 481. NATIONAL EMISSION STANDARDS FOR AFFECTED UNITS.

(a) DEFINITIONS.—For purposes of this section:

(1) The term ''commenced'', with regard to construction, means that an owner or operator has either undertaken a continuous program of construction or has entered into a contractual obligation to undertake and complete, within a reasonable time, a continuous program of construction. For boilers and integrated gasification combined cycle plants, this term does not include undertaking such a program or entering into such an obligation more than 36 months prior to the date on which the unit begins operation. For combustion turbines, this term does not include undertaking such a program or entering into such an obligation more than 18 months prior to the date on which the unit begins operation.

(2) The term ''construction'' means fabrication, erection, or installation of an affected unit.

(3) The term ''affected unit'' means any unit that is subject to emission limitations under subpart 2 of part B, subpart 2 of part C, or part D.

(4) The term ''existing affected unit'' means any affected unit that is not a new affected unit.

(5) The term ''new affected unit;'' means any affected unit, the construction or reconstruction of which is commenced after the date of enactment of the Clear Skies Act of 2003, except that for the purpose of any revision of a standard pursuant to subsection (e), ''new affected unit'' means any affected unit, the construction or reconstruction of which is commenced after the publication of regulations (or, if earlier, proposed regulations) prescribing a standard under this section that will apply to such unit.

(6) The term ''reconstruction'' means the replacement of components of a unit to such an extent that—

(A) the fixed capital cost of the new components exceeds 50 percent of the fixed capital cost that would be required to construct a comparable entirely new unit; and

(B) it is technologically and economically feasible to meet the applicable standards set forth in this section.

(b) EMISSION STANDARDS.—

(1) IN GENERAL.—No later than 12 months after the date of enactment of the Clear Skies Act of 2003, the Administrator shall promulgate regulations prescribing the standards in subsections (c) through (d) for the specified affected units and establishing requirements to ensure compliance with these standards, including monitoring, recordkeeping, and reporting requirements.

(2) MONITORING.—(A) The owner or operator of any affected unit subject to the standards for sulfur dioxide, nitrogen oxides, or mercury under this section shall meet the requirements of section 405, except that, where two or more units utilize a single stack, separate monitoring shall be required for each affected unit for the pollutants for which the unit is subject to such standards.

(B) The Administrator shall, by regulation, require—

(i) the owner or operator of any affected unit subject to the standards for sulfur dioxide, nitrogen oxides, or mercury under this section to—

(I) install and operate GEMS for monitoring output, including electricity and useful thermal energy, on the affected unit and to quality assure the data; and

(II) comply with recordkeeping and reporting requirements, including provisions for reporting output data in megawatt hours.

(ii) the owner or operator of any affected unit subject to the standards for particulate matter under this section to—

(I) install and operate CEMS for monitoring particulate matter on the affected unit and to quality assure the data;

(II) comply with recordkeeping and reporting requirements; and

(III) comply with alternative monitoring, quality assurance, recordkeeping, and reporting requirements for any period of time for which the Administrator determines that CEMS with appropriate vendor guarantees are not commercially available for particulate matter.

(3) COMPLIANCE.—For boilers, integrated gasification combined cycle plants, and coal fired or gas-fired combustion turbines the Administrator shall require that the owner or operator demonstrate compliance with the standards daily, using a 30–day rolling average, except that in the case of mercury,

the compliance period shall be the calendar year. For combustion turbines that are oil-fired the Administrator shall require that the owner or operator demonstrate compliance with the standards hourly, using a 4–hour rolling average.

(c) BOILERS AND INTEGRATED GASIFICATION COMBINED CYCLE PLANTS.—

(1) After the effective date of standards promulgated under subsection (b), no owner or operator shall cause any boiler or integrated gasification combined cycle plant that is a new affected unit to discharge into the atmosphere any gases which contain—

(A) sulfur dioxide in excess of 2.0 lb/MWh;

(B) nitrogen oxides in excess of 1.0 lb/MWh;

(C) particulate matter in excess of 0.20 lb/MWh; or

(D) if the unit is coal-fired, mercury in excess of 0.015 lb/GWh, unless—

(i) mercury emissions from the unit, determined assuming no use of on-site or off-site pre-combustion treatment of coal and no use of technology that captures mercury, are reduced by 80 percent;

(ii) flue gas desulfurization (FGD) and selective catalytic reduction (SCR) are applied to the unit; or

(iii) a technology is applied to the unit and the permitting authority determines that the technology is equivalent in terms of mercury capture to the application of FGD and SCR.

(2) Notwithstanding subparagraph (1)(D), integrated gasification combined cycle plants with a combined capacity of less than 5 GW are exempt from the mercury requirement under subparagraph (1)(D) if they are constructed as part of a demonstration project under the Secretary of Energy that will include a demonstration of removal of significant amounts of mercury as determined by the Secretary of Energy in conjunction with the Administrator as part of the solicitation process.

(3) After the effective date of standards promulgated under subsection (b), no owner or operator shall cause any oil-fired boiler that is an existing affected unit to discharge into the atmosphere any gases which contain particulate matter in excess of 0.30 lb/MWh.

(d) COMBUSTION TURBINES.—

(1) After the effective date of standards promulgated under subsection (b), no owner or operator shall cause any gas-fired combustion turbine that is a new affected unit to discharge into the atmosphere any gases which contain nitrogen oxides in excess of—

(A) 0.56 lb/MWh (15 ppm at 15 percent oxygen), if the unit is a simple cycle combustion turbine;

(B) 0.084 lb/MWh (3.5 ppm at 15 percent oxygen), if the unit is not a simple cycle combustion turbine and either uses add-on controls or is located within 50 km of a class I area; or

(C) 0.21 lb/MWh (9 ppm at 15 percent oxygen), if the unit is not a simple cycle turbine and neither uses add-on controls nor is located within 50 km of a class I area.

(2) After the effective date of standards promulgated under subsection (b), no owner or operator shall cause any coal-fired combustion turbine that is a new affected unit to discharge into the atmosphere any gases which contain sulfur dioxide, nitrogen oxides, particulate matter, or mercury in excess of the emission limits under subparagraphs (c)(1) (A) through (D).

(3) After the effective date of standards promulgated under subsection (b), no owner or operator shall cause any combustion turbine that is not gas-fired or coal-fired and that is a new affected unit to discharge into the atmosphere any gases which contain—

(A) sulfur dioxide in excess of 2.0 lb/MWh;

(B) nitrogen oxides in excess of—

(i) 0.2891b/MWh (12 ppm at 15 percent oxygen), if the unit is not a simple cycle combustion turbine, is dual-fuel capable, and uses add-on controls; or is not a simple cycle combustion turbine and is located within 50 km of a class I area;

(ii) 1.01 lb/MWh (42 ppm at 15 percent oxygen), if the unit is a simple cycle combustion turbine; is not a simple cycle combustion turbine and is not dual-fuel capable; or is not a simple cycle combustion turbine, is dual-fuel capable, and does not use add-on controls.

(C) particulate matter in excess of 0.20 lb/MWh.

(e) PERIODIC REVIEW AND REVISION.—

(1) The Administrator shall, at least every 8 years following the promulgation of standards under subsection (b), review and, if appropriate, revise such standards to reflect the degree of emission limitation demonstrated by substantial evidence to be achievable through the application of the best system of emission reduction which (taking into account the cost of achieving such reduction and any nonair quality health and environmental impacts and energy requirements). When implementation and enforcement of any requirement of this Act indicate that emission limitations and percent reductions beyond those required by the standards promulgated under this section are achieved in practice, the Administrator shall, when revising standards promulgated under this section, consider the emission limitations and percent reductions achieved in practice.

(2) Notwithstanding the requirements of paragraph (1) the Administrator need not review any standard promulgated under subsection (b) if the Administrator determines that such review is not appropriate in light of readily available information on the efficacy of such standard.

(f) EFFECTIVE DATE.—The standard promulgated pursuant to this section shall become effective upon promulgation.

(g) DELEGATION.—

(1) Each State may develop and submit to the Administration a procedure for implementing and enforcing standards promulgated under this section for affected units located in such State. If the Administrator finds the State procedure is adequate, the Administrator shall delegate to such State any authority the Administrator has under this Act to implement and enforce such standards.

(2) Nothing in this subsection shall prohibit the Administrator from enforcing any applicable standard under this section.

(h) VIOLATIONS.—After the effective date of standards promulgated under this section, it shall be unlawful for any owner or operator of any affected unit to operate such unit in violation of any standard, established by this section applicable to such unit.

(i) COORDINATION WITH OTHER AUTHORITIES.—For purposes of sections III(e), 113, 114, 116, 120, 303, 304, 307 and other provisions for the enforcement of this Act, each standard established pursuant to this section shall be treated in the same manner as a standard of performance under section 111, and each affected unit subject to standards under this section shall be treated in the same manner as a stationary source under section 111.

(j) STATE AUTHORITY.—Nothing in this section shall preclude or deny the right of any State or political subdivision thereof to adopt or enforce any regulation, requirement, limitation, or standard relating to affected units, or other EGUs, that is more stringent than a regulation, requirement, limitation, or standard in effect under this section or under any other provision of this Act.

(k) OTHER AUTHORITY UNDER THIS ACT.—Nothing in this section shall diminish the authority of the Administrator or a State to establish any other requirements applicable to affected units under any other authority of law, including the authority to establish for any air pollutant a national ambient air quality standard, except that no new affected unit subject to standards under this section shall be subject to standards under section 111 of this Act.

SEC. 482. RESEARCH, ENVIRONMENTAL MONITORING, AND ASSESSMENT.

(a) PURPOSES.—The Administrator, in collaboration with the Secretary of Energy and the Secretary of the Interior, shall conduct a comprehensive program of research, environmental monitoring, and assessment to enhance scientific understanding of the human health and environmental effects of particulate matter and mercury and to demonstrate the efficacy of emission reductions under this title for purposes of reporting to Congress under (e)(2). The purposes of such a program are to—

(1) expand current research and knowledge of the contribution of emissions from electricity generation to exposure and health effects associated with particulate matter and mercury;

(2) enhance current research and development of promising multi-pollutant control strategies and CEMS for mercury;

(3) produce peer-reviewed scientific and technology information;

(4) improve environmental monitoring and assessment of sulfur dioxide, nitrogen oxides and mercury, and their transformation products, to track changes in human health and the environment attributable to emission reductions under this title; and

(5) periodically provide peer-reviewed reports on the costs, benefits, and effectiveness of emission reductions achieved under this title.

(b) RESEARCH.—The Administrator shall enhance planned and ongoing laboratory and field research and modeling analyses, and conduct new research and analyses to produce peer-reviewed information concerning the human health and environmental effects of mercury and particulate matter and the contribution of United States electrical generating units to those effects. Such information shall be included in the report under subsection (d). In addition, such research and analyses shall—

(1) improve understanding of the rates and processes governing chemical and physical transformations of mercury in the atmosphere, including speciation of emissions from electricity generation and the transport of these species;

(2) improve understanding of the contribution of mercury emissions from electricity generation to mercury in fish and other biota, including—

(A) the response of and contribution to mercury in the biota owing to atmospheric deposition of mercury from U.S. electricity generation on both local and regional scales;

(B) long-term contributions of mercury from U.S. electricity generation on mercury accumulations in ecosystems, and the effects of mercury reductions in that sector on the environment and public health;

(C) the role and contribution of mercury, from U.S. electricity generating facilities and anthropogenic and natural sources to fish contamination and to human exposure, particularly with respect to sensitive populations;

(D) the contribution of U.S. electricity generation to population exposure to mercury in freshwater fish and seafood and quantification of linkages between U.S. mercury emissions and domestic mercury exposure and its health effects; and

(E) the contribution of mercury from U.S. electricity generation in the context of other domestic and international sources of mercury, including transport of global anthropogenic and natural background levels;

(3) improve understanding of the health effects of fine particulate matter components related to electricity generation emissions (as distinct from other fine particle fractions and indoor air exposures) and the contribution of U.S. electrical generating units to those effects including—

(A) the chronic effects of fine particulate matter from electricity generation in sensitive population groups; and

(B) personal exposure to fine particulate matter from electricity generation; and

(4) improve understanding, by way of a review of the literature, of methods for valuing human health and environmental benefits associated with fine particulate matter and mercury.

(c) INNOVATIVE CONTROL TECHNOLOGIES.—The Administrator shall collaborate with the Secretary of Energy to enhance research and development, and conduct new research that facilitates research into and development of innovative technologies to control sulfur dioxide, nitrogen oxides, mercury, and particulate matter at a lower cost than existing technologies. Such research and development shall provide updated information on the cost and feasibility of technologies. Such information shall be included in the report under subsection (d). In addition, the research and development shall—

(1) upgrade cost and performance models to include results from ongoing and future electricity generation and pollution control demonstrations by the Administrator and the Secretary of Energy;

(2) evaluate the overall environmental implications of the various technologies tested including the impact on the characteristics of coal combustion residues;

(3) evaluate the impact of the use of selective catalytic reduction on mercury emissions from the combustion of all coal types;

(4) evaluate the potential of integrated gasification combined cycle to adequately control mercury;

(5) expand current programs by the Administrator to conduct research and promote, lower cost CEMS capable of providing real-time measurements of both speciated and total mercury and integrated compact CEMS that provide cost-effective real-time measurements of sulfur dioxide, nitrogen oxides, and mercury;

(6) expand lab- and pilot-scale mercury and multi-pollutant control programs by the Secretary of Energy and the Administrator, including development of enhanced sorbents and scrubbers for use on all coal types;

(7) characterize mercury emissions from low-rank coals, for a range of traditional control technologies, like scrubbers and selective catalytic reduction; and

(8) improve low cost combustion modifications and controls for dry-bottom boilers.

(d) ENVIRONMENTAL ACCOUNTABILITY.—

(1) MONITORING AND ASSESSMENT.—The Administrator shall conduct a program of environmental monitoring and assessment to track on a continuing basis, changes in human health and the environment attributable to the emission reductions required under this title. Such a program shall—

(A) develop and employ methods to routinely monitor, collect, and compile data on the status and trends of mercury and its transformation products in emissions from affected facilities, atmospheric deposition, surface water quality, and biological systems. Emphasis shall be placed on those methods that—

(i) improve the ability to routinely measure mercury in dry deposition processes;

(ii) improve understanding of the spatial and temporal distribution of mercury deposition in order to determine source-receptor relationships and patterns of long-range, regional, and local deposition;

(iii) improve understanding of aggregate exposures and additive effects of methylmercury and other pollutants; and

(iv) improve understanding of the effectiveness and cost of mercury emissions controls;

(B) modernize and enhance the national air quality and atmospheric deposition monitoring networks in order to cost-effectively expand and integrate, where appropriate, monitoring capabilities for sulfur, nitrogen, and mercury to meet the assessment and reporting requirements of this section;

(C) perform and enhance long-term monitoring of sulfur, nitrogen, and mercury, and parameters related to acidification, nutrient enrichment, and mercury bioaccumulation in freshwater and marine biota;

(D) maintain and upgrade models that describe the interactions of emissions with the atmosphere and resulting air quality implications and models that describe the response of ecosystems to atmospheric deposition; and

(E) assess indicators of ecosystems health related to sulfur, nitrogen, and mercury, including characterization of the causes and effects of episodic exposure to air pollutants and evaluation of recovery.

(2) REPORTING REQUIREMENTS.—Not later than January 1, 2008, and not later than every 4 years thereafter, the Administrator shall provide a peer reviewed report to the Congress on the costs, benefits, and effectiveness of emission reduction programs under this title.

(A) The report under this subparagraph shall address the relative contribution of emission reductions from U.S. electricity generation under this title compared to the emission reductions achieved under other titles of the Clean Air Act with respect to—

(i) actual and projected emissions of sulfur dioxide, nitrogen oxides, and mercury;

(ii) average ambient concentrations of sulfur dioxide and nitrogen oxides transformation products, related air quality parameters, and indicators of reductions in human exposure;

(iii) status and trends in total atmospheric deposition of sulfur, nitrogen, and mercury, including regional estimates of total atmospheric deposition;

(iv) status and trends in visibility;

(v) status of terrestrial and aquatic ecosystems (including forests and forested watersheds, streams, lakes, rivers, estuaries, and nearcoastal waters);

(vi) status of mercury and its transformation products in fish;

(vii) causes and effects of atmospheric deposition, including changes in surface water quality, forest and soil conditions;

(viii) occurrence and effects of coastal eutrophication and episodic acidification, particularly with respect to high elevation watersheds; and

(ix) reduction in atmospheric deposition rates that should be achieved to prevent or reduce adverse ecological effects.

(B) The report under this subparagraph shall address the relative contribution of the United States to world-wide emissions as well as a comparison of the stringency of fossil fuel-fired requirements under the Act to other countries.

SEC. 483. MAJOR SOURCE PRECONSTRUCTION REVIEW REQUIREMENTS AND BEST AVAILABLE RETROFIT CONTROL TECHNOLOGY REQUIREMENTS; APPLICABILITY TO AFFECTED UNITS.

(a) MAJOR SOURCE EXEMPTION.—An affected unit shall not be considered a major emitting facility or major stationary source, or a part of a major emitting facility or major stationary source for purposes of compliance with the requirements of parts C and part D of title I nor shall it otherwise be subject to the requirements of section 169A or 169B. This applicability provision only applies to affected units that are either subject to the performance standards of section 481 or meet the following requirements within 3 years after the date of enactment of the Clear Skies Act of 2003:

(1) The owner or operator of the affected unit properly operates, maintains and repairs pollution control equipment to limit emissions of particulate matter, or the owner or operator of the affected unit is subject to an enforceable permit issued pursuant to title V or a permit program approved or promulgated as part of an applicable implementation plan to limit the emissions of particulate matter from the affected unit to 0.03 lb/mmBtu within 8 years after the date of enactment of the Clear Skies Act of 2003, and

(2) The owner or operator of the affected unit uses good combustion practices to minimize emissions of carbon monoxide. Good combustion practices may be accomplished through control technology, combustion technology improvements, or workplace practices.

(b) CLASS I AREA PROTECTIONS.—Notwithstanding the provisions of subsection (a), an affected unit located within 50 km of a Class I area on which construction commences after the date of enactment of the Clear Skies Act of 2003 is subject to those provisions under part C of title I pertaining to the review of a new or reconstructed major stationary source's impact on a Class I area.

(c) PRECONSTRUCTION REQUIREMENTS.—Each State shall include in its plan under section 110, as program to provide for the regulation of the construction of an affected unit that ensures that the following requirements are met prior to the commencement of construction of an affected unit—

(1) in an area designated as attainment or unclassifiable under section 107(d), the owner or operator of the affected unit must demonstrate to the State that the emissions increase from the construction or operation of such unit will not cause, or contribute to, air pollution in excess of any national ambient air quality standard;

(2) in an area designated as nonattainment under section 107(d), the State must determine that the emissions increase from the construction or operation of such unit will not interfere with any program to assure that the national ambient air quality standards are achieved provided that interference with any program will be deemed not to occur, with respect to each nonattainment area located wholly or partially within the State, if on the date of submission of a complete permit application and throughout a continuous period of three years immediately preceding such date, the nonattainment area was in full compliance with all requirements of this Act, including but not limited to requirements for State Implementation Plans;

(3) for a reconstructed unit, prior to beginning operation, the unit must comply with either the performance standards of section 481 or best available control technology as defined in part C of title I for the pollutants whose hourly emissions will increase at the unit's maximum capacity; and

(4) the State must provide for an opportunity for interested persons to comment on the Class I area protections and preconstruction requirements as set forth in this section.

(d) DEFINITIONS.—For purposes of this section:

(1) The term ''affected unit'' means any unit that is subject to emission limitations under subpart 2 of part B, subpart 2 of part C, or part D.

(2) The term ''construction'' includes the construction of a new affected unit and the modification of any affected unit.

(3) The term ''modification'' means any physical change in, or change in the method of operation of, an affected unit that increases the maximum hourly emissions of any pollutant regulated under this Act above the maximum hourly emissions achievable at that unit during the 5 years prior to the change or that results in the emission of any pollutant regulated under this Act and not previously emitted.

(e) SAVINGS CLAUSE.—Nothing in this section shall preclude or deny the right of any State or political subdivision thereof to adopt to enforce any regulation, requirements, limitation, or standard relating to affected units that is more stringent than a regulation, requirement, limitation, or standard in effect under this section or under any other provision of this Act.

SEC. 3. OTHER AMENDMENTS.

(a) Title I of the Clean Air Act is amended as follows:

(1) In section 103 by repealing subparagraphs (E) and (F).

(2) In section 107—

(A) By amending subparagraph (A) of subsection (d)(1) as follows:

(i) strike 'or' at the end of clause (ii);

(ii) strike the period at the end of clause (iii) and insert, ''or'';

(iii) add the following clause (iv) after clause (iii): (iv) notwithstanding clauses (i) through (iii), an area may be designated transitional for the PM 2.5 national primary or secondary ambient air quality standards or the 8–hour ozone national primary or secondary ambient air quality standard if the Administrator has performed air quality modeling and, in the case of an area that needs additional local control measures, the State has performed supplemental air quality modeling, demonstrating that the area will attain the applicable standard or standards no later than December 31, 2015, and such modeling demonstration and all necessary local controls have been approved into the State implementation plan no later than December 31, 2004.

(iv) add at the end a sentence to read as follows: 'For purposes of the PM 2.5 national primary or secondary ambient air quality standards, the time period for the State to submit the designations shall be extended to no later than December 31, 2003.

(B) By amending clause (i) of subsection (d)(1)(B) by adding at the end a sentence to read as follows: 'The Administrator shall not be required to designate areas for the revised PM 2.5 national primary or secondary ambient air quality standards prior to 6 months after the States are required to submit recommendations under section 107(d)(1)(A), but in no event shall the period for designating such areas be extended beyond December 31, 2004.

(3) In section 110 as follows:

(A) By amending clause (i) of subsection (a)(2)(D) by inserting ''except as provided in subsection (q),'' before the word ''prohibiting''.

(B) By adding the following new subsections at the end thereof:

''(q) REVIEW OF CERTAIN PLANS.—(1) The Administrator shall, in reviewing, under clause (i) of subsection (a)(2)(D), any plan with respect to affected units, within the meaning of section 126(d)(l)—

(A) consider, among other relevant factors, emissions reductions required to occur by the attainment date or dates of any relevant nonattainment areas in the other State or States;

''(B) not require submission of plan provisions mandating emissions reductions from such affected units, unless the Administrator determines that—

''(i) emissions from such units may be reduced at least as cost-effectively as emissions from each other principal category of sources of the relevant pollutant, pollutants, or pre-cursors thereof, including industrial boilers, on-road mobile sources, and off-road mobile sources, and any other category of sources that the Administrator may identify, and

''(ii) reductions in such emissions will improve air quality in the other State's or States' nonattainment areas at least as cost-effectively as reductions in emissions from each other principal category of sources of the relevant pollutant, pollutants, or precursors thereof, to the maximum extent that a methodology is reasonably available to make such a determination;

''(C) develop an appropriate peer reviewed methodology for making determinations under subparagraph (B) by December 31, 2006; and

''(D) not require submission of plan provisions subjecting affected units, within the meaning of section 126(d)(1), to requirements with an effective date prior to December 31, 2014.

''(2) In making the determination under clause (ii) of subparagraph (B) of paragraph (1), the Administrator will use the best available peer-reviewed models and methodology that consider the proximity of the source or sources to the other State or States and incorporate other source characteristics.

''(3) Nothing in paragraph (1) shall be interpreted to require revisions to the provisions of 40 C.F.R. Parts 51.121 and 51.122 (2001).

''(r) TRANSITIONAL AREAS.—

''(1) MAINTENANCE.—(A) By December 31, 2011, each area designated as transitional pursuant to section 107(d)(1) shall submit an updated emission inventory and an analysis of whether growth in emissions, including growth in vehicle miles traveled, will interfere with attainment by December 31, 2014.

''(B) No later than December 31, 2011, the Administrator shall review each transitional area's maintenance analysis, and, if the Administrator determines that growth in emissions will interfere with attainment by December 31, 2014, the Administrator shall consult with the State and determine what action, if any, is necessary to assure that attainment will be achieved by December 31, 2014.

''(2) PREVENTION OF SIGNIFICANT DETERIORATION.—Each area designated as transitional pursuant to section 107(d)(1) shall be treated as an attainment or unclassifiable area for purposes of the prevention of significant deterioration provisions of part C of this title.

''(3) CONSEQUENCES OF FAILURE TO ATTAIN BY 2015.—No later than June 30, 2016, the Administrator shall determine whether each area designated as transitional for the 8–hour ozone standard or for the PM 2.5 standard has attained that standard. If the Administrator determines that a transitional area has not attained the standard, the area shall be redesignated as nonattainment within 1 year of the determination and the State shall be required to submit a State implementation plan revision satisfying the provisions of section 172 within 3 years of redesignation as nonattainment.

''(4) In section 111(b)(1) by adding the following new subparagraph (C) after subparagraph (B):

''(C) No standards of performance promulgated under this section shall apply to units subject to regulations promulgated pursuant to section 481.

''(5) In section 112:

''(A) by amending paragraph (1) of subsection (c) to read as follows:

''(1) IN GENERAL.—Not later than 12 months after November 15, 1990, the Administrator shall publish, and shall from time to time, but not less often than every 8 years, revise, if appropriate, in response to public comment or new information, a list of all categories and subcategories of major sources and area sources (listed under paragraph (3)) of the air pollutants listed pursuant to subsection (b). Electric utility steam generating units not subject to section 3005 of the Solid Waste Disposal Act shall not be included in any category or subcategory listed under this subsection. The Administrator shall have the authority to regulate the emission of hazardous air pollutants listed under section 112(b), other than mercury compounds, by electric utility steam generating units, provided that any determination shall be based on public health concerns and, on an individual source basis shall: consider the effects of emissions controls installed or anticipated to be installed in order to meet other emission reduction requirements under this Act by 2018; and, be based on a peer reviewed study with notice and opportunity to comment, to be completed not before January 2015. Any such regulations shall be promulgated within, and shall not take effect before, the date 8 years after the commencement date of the requirements set forth in section 472. To the extent practicable, the categories and subcategories listed under this subsection shall be consistent with the list of source categories established pursuant to section 111 and part C. Nothing in the preceding sentence limits the Administrator's authority to establish subcategories under this section, as appropriate.

''(B) By amending subparagraph (A) of subsection (n)(1) is amended to read as follows:

''(A) The Administrator shall perform a study of the hazards to public health reasonably anticipated to occur as a result of emissions by electric utility steam generating units of pollutants listed under subsection (b) after imposition of the requirements of this Act. The Administrator shall report the results of this study to the Congress within 3 years after November 15, 1990.

''(6) Section 126 is amended as follows:

''(A) By replacing 'section 110(a)(2)(D)(ii) or this section' in subsection (b) with 'section 110(a)(2)(D)(i)'.

''(B) By replacing 'this section and the prohibition of section 110(a)(2)(D)(ii)' in subsection (e)(1) with 'the prohibition of section 110(a)(2)(D)(i)'.

''(C) In the language at end of subsection (c) by striking 'section 110(a)(2)(D)(ii)' and inserting 'section 110(a)(2)(D)(i)' and deleting the last sentence.

''(D) By amending subsection (d) to read as follows:

''(d)(1) For purposes of this subsection, the term 'affected unit' means any unit that is subject to emission limitations under subpart 2 of part B, subpart 2 of part C, or part D, or is a designated unit under section 407.

''(2) To the extent that any petition submitted under subsection (b) after the date of enactment of the Clear Skies Act of 2003 seeks a finding for any affected unit, then, notwithstanding any provision in subsections (a) through (c) to the contrary—

''(A) in determining whether to make a finding under subsection (b) for any affected unit, the Administrator shall consider, among other relevant factors, emissions reductions required to occur by the attainment date or dates of any relevant nonattainment areas in the petitioning State or political subdivision;

''(B) the Administrator may not determine that affected units emit, or would emit, any air pollutant in violation of the prohibition of section 110(a)(2)(D)(i) unless that Administrator determines that—

''(i) such emissions may be reduced at least as cost-effectively as emissions from each other principal category of sources of sulfur dioxide or nitrogen oxides, including industrial boilers, on-road mobile sources, and off-

road mobile sources, and any other category of sources that the Administrator may identify; and

''(ii) reductions in such emissions will improve air quality in the petitioning State's nonattainment area or areas at least as cost-effectively as reductions in emissions from each other principal category of sources of sulfur dioxide or nitrogen oxides to the maximum extent that a methodology is reasonably available to make such a determination.

In making the determination under clause (ii), the Administrator shall use the best available peer-reviewed models and methodology that consider the proximity of the source or sources to the petitioning State or political subdivision and incorporate other sources characteristics.

''(C) The Administrator shall develop an appropriate peer reviewed methodology for making determinations under subparagraph (B) by December 31, 2006.

''(D) The Administrator shall not make any findings with respect to an affected unit under this section prior to December 1, 2011. For any petition submitted prior to January 1, 2010, the Administrator shall make a finding or deny the petition by the December 31, 2011.

''(E) The Administrator, by rulemaking, shall extend the compliance and implementation deadlines in subsection (c) to the extent necessary to assure that no affected unit shall be subject to any such deadline prior to January 1, 2014.''

(b) TITLE III.—Section 307(d)(1)(G) of title III of the Clean Air Act is amended to read as follows:

''(G) the promulgation or revision of any regulation under title IV,''.

(c) NOISE POLLUTION.—Title N of the Clean Air Act (relating to noise pollution) (42 U.S.C. 7641 et seq.) is redesignated as title VII and amended by renumbering sections 401 through 403 as sections 701 through 703, respectively and conforming all cross-references thereto accordingly.

(d) SECTION 406.—Title IV of the Clean Air Act Amendments of 1990 (relating to acid deposition control) is amended by repealing section 406 (industrial Sulfur dioxide emissions).

(e) MONITORING.—Section 821 (a) of title VIII of the Clean Air Act Amendments of 1990 (miscellaneous provisions) is amended to read as follows:

''(a) MONITORING.—The Administrator shall promulgate regulations within 18 months after November 15, 1990, to require that all affected sources subject to subpart 1 of part B of title IV of the Clean Air Act as of December 31, 2009, shall also monitor carbon dioxide emissions according to the same timetable as in section 405(b). The required monitoring may be no more stringent than that required by any two of the four most populous countries for units comparable to the affected units in the United States. The regulations shall require that such data be reported to the Administrator. The provisions of section 405(e) of title IV of the Clean Air Act shall apply for purposes of this section in the same manner and to the same extent as such provision applies to the monitoring and data referred to in section 405. The Administrator shall implement this subsection under 40 CFR Part 75 (2002), amended as appropriate by the Administrator.''

SUBMITTED RESOLUTIONS

SENATE CONCURRENT RESOLUTION 80—URGING JAPAN TO HONOR ITS COMMITMENTS UNDER THE 1986 MARKET-ORIENTED SECTOR-SELECTIVE (MOSS) AGREEMENT ON MEDICAL EQUIPMENT AND PHARMACEUTICALS, AND FOR OTHER PURPOSES

Mr. COLEMAN (for himself and Mr. BAYH) submitted the following concurrent resolution; which was referred to the Committee on Foreign Relations:

S. CON. RES. 80

Whereas the revolution in medical technology has improved our ability to respond to emerging threats and prevent, identify, treat, and cure a broad range of diseases and disabilities, and has the proven potential to bring even more valuable advances in the future;

Whereas medical technology has driven dramatic productivity gains for the benefit of patients, providers, employers, and our economy;

Whereas investment from the United States medical technology industry produces the majority of the $175,000,000,000 global business in development of medical devices, diagnostic products, and medical information systems, allowing patients to lead longer, healthier, and more productive lives;

Whereas the United States medical technology industry supports almost 1,000,000 Americans in high-value jobs located in every State, and the industry is a net contributor to the United States balance of trade, with a trade surplus of $3,300,000,000;

Whereas Japan is one of the most important trading partners of the United States;

Whereas United States products account for roughly ½ of the global market, but garner only a ⅓ share of Japan's market;

Whereas Japan has made little progress in implementing its commitments to cut product review times, improve their reimbursement system, and consult bilaterally on policy changes under the Market-Oriented Sector-Selective (MOSS) Agreement on Medical Equipment and Pharmaceuticals, signed on January 9, 1986, between the United States and Japan;

Whereas, although regulatory reviews in Japan remain among the lengthiest in the world and Japan needs to accelerate patient access to safe and beneficial medical technologies, proposals currently under consideration in Japan would, in many cases, actually increase regulatory burdens on manufacturers and delay access without enhancing patient safety;

Whereas the general cost of doing business in Japan is among the highest in the world and is driven significantly higher by certain factors in the medical technology sector, and inefficiencies in Japanese distribution networks and hospital payment systems and unique regulatory burdens drive up the cost of bringing innovations to Japanese consumers and impede patient access to life-saving and life-enhancing medical technologies;

Whereas artificial government price caps such as the foreign average price policy adopted by the Government of Japan in 2002 restrict patient access and fail to recognize the value of innovation;

Whereas less than 1/10 of 1 percent of the tens of thousands of medical technologies introduced in Japan in the last 10 years received new product pricing;

Whereas the Government of Japan has adopted artificial price caps that are targeted toward technologies predominately marketed by United States companies and is considering altering pricing rules to enable further cuts to these products; and

Whereas these discriminatory pricing policies will allow the Japanese government to take advantage of United States research and development: Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), That Congress—

(1) urges Japan to honor its commitments under the Market-Oriented Sector-Selective (MOSS) Agreement on Medical Equipment and Pharmaceuticals, signed on January 9, 1986, between the United States and Japan (hereafter in this resolution referred to as the ''MOSS Agreement''), by—

(A) reducing regulatory barriers to the approval and adoption of new medical technologies; and

(B) establishing reasonable agency performance goals for premarket approvals and an appropriate, risk-based postmarket system consistent with globally accepted practices;

(2) urges Japan to honor its commitments under the MOSS Agreement to improve the reimbursement environment for medical technologies by actively promoting pricing policies that encourage innovation for the benefit of Japanese patients and the Japanese economy; and

(3) urges Japan to honor its commitments under the MOSS Agreement by—

(A) implementing fair and open processes and rules that do not disproportionately harm United States medical technology products; and

(B) providing opportunities for consultation with trading partners.

AMENDMENTS SUBMITTED & PROPOSED

SA 2143. Mr. VOINOVICH submitted an amendment intended to be proposed by him to the bill S. 150, to make permanent the moratorium on taxes on Internet access and multiple and discriminatory taxes on electronic commerce imposed by the Internet Tax Freedom Act; which was ordered to lie on the table.

SA 2144. Mr. CORNYN submitted an amendment intended to be proposed by him to the bill H.R. 2799, making appropriations for the Departments of Commerce, Justice, and State, the Judiciary, and related agencies for the fiscal year ending September 30, 2004, and for other purposes; which was ordered to lie on the table.

SA 2145. Mr. BAUCUS submitted an amendment intended to be proposed by him to the bill H.R. 2799, supra; which was ordered to lie on the table.

SA 2146. Mr. KYL submitted an amendment intended to be proposed by him to the bill H.R. 2799, supra; which was ordered to lie on the table.

SA 2147. Mr. CRAIG (for himself and Mr. HAGEL) submitted an amendment intended to be proposed by him to the bill H.R. 2799, supra; which was ordered to lie on the table.

TEXT OF AMENDMENTS

SA 2143. Mr. VOINOVICH submitted an amendment intended to be proposed by him to the bill S. 150, to make permanent the moratorium on taxes on Internet access and multiple and discriminatory taxes on electronic commerce imposed by the Internet Tax Freedom Act; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. ___. SENSE OF SENATE ON NONTAXATION OF E-MAIL.

(a) FINDINGS.—The Senate finds that—

(1) the Internet is an indispensable part of global electronic connectivity and will only become more useful and indispensable as new technologies continue to be developed;

(2) Internet usage continues to grow exponentially in the United States and around the world;

(3) the Internet is used by every age group in our population and its use continues to increase regardless of income, education, age, race, ethnicity, or gender;

(4) our citizens rely on the Internet for real-time information, news, communication and commerce;

(5) the Internet and e-mail have succeeded in linking people across the country and around the world for personal, commercial, cultural, educational, governmental and a variety of other types of interactions;

(6) millions of e-mails are sent across the United States on a daily basis;

(7) the use of e-mail has allowed Americans to communicate to one another more information more conveniently, frequently, and inexpensively;

(8) taxing of e-mail would be a detriment to the continued growth of the Internet; and

(9) taxing of e-mail would have a negative financial impact on our citizens who use email to communicate with their family, friends, and coworkers.

(b) SENSE OF THE SENATE.—It is the sense of the Senate that e-mail should not now, or in the future, be taxed by Federal, state, or local governments.

SA 2144. Mr. CORNYN submitted an amendment intended to be proposed by him to the bill H.R. 2799, making appropriations for the Departments of Commerce, Justice, and State, the Judiciary, and related agencies for the fiscal year ending September 30, 2004, and for other purposes; which was ordered to lie on the table; as follows:

On page 77, between lines 20 and 21, insert the following:

SEC. 413. A Mexican national described in section 212.1(c)(1)(i) of title 8 of the Code of Federal Regulations, as in effect on the date of enactment of this Act, shall be admitted as a nonimmigrant visitor for a period of 6 months.

SA 2145. Mr. BAUCUS submitted an amendment intended to be proposed by him to the bill H.R. 2799, making appropriations for the Departments of Commerce, Justice, and State, the Judiciary, and related agencies for the fiscal year ending September 30, 2004, and for other purposes; which was ordered to lie on the table; as follows:

On page 30, line 10, strike ''$36,994,000'' and insert ''$41,994,000''.

SA 2146. Mr. KYL submitted an amendment intended to be proposed by him to the bill H.R. 2799, making appropriations for the Departments of Commerce, Justice, and State, the Judiciary, and related agencies for the fiscal year ending September 30, 2004, and for other purposes; which was ordered to lie on the table; as follows:

Insert at the appropriate place:

SECTION 1. TREATMENT AS AGENT OF A FOREIGN POWER UNDER FOREIGN INTELLIGENCE SURVEILLANCE ACT OF 1978 OF NON-UNITED STATES PERSONS WHO ENGAGE IN INTERNATIONAL TERRORISM WITHOUT AFFILIATION WITH INTERNATIONAL TERRORIST GROUPS.

(a) IN GENERAL.—Section 101(b)(1) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801(b)(1)) is amended by adding at the end the following new subparagraph:

''(C) engages in international terrorism or activities in preparation therefor; or.''

(b) SUNSET.—The amendment made by subsection (a) shall be subject to the sunset provision in section 224 of the USA PATRIOT Act of 2001 (Public Law 107–56; 115 Stat. 295), including the exception provided in subsection (b) of such section 224.

SEC. 2. ADDITIONAL ANNUAL REPORTING REQUIREMENTS UNDER THE FOREIGN INTELLIGENCE SURVEILLANCE ACT OF 1978.

(a) ADDITIONAL REPORTING REQUIREMENTS.—The Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.) is amended—

(1) by redesignating—

(A) title VI as title VII; and

(B) section 601 as section 701; and

(2) by inserting after title V the following new title VI:

''TITLE VI—REPORTING REQUIREMENT

''ANNUAL REPORT OF THE ATTORNEY GENERAL

''SEC. 601. (a) In addition to the reports required by sections 107, 108, 306, 406, and 502 in April each year, the Attorney General shall submit to the appropriate committees of Congress each year a report setting forth with respect to the one-year period ending on the date of such report—

''(1) the aggregate number of non-United States persons targeted for orders issued under this Act, including a break-down of those targeted for—

''(A) electronic surveillance under section 105;

''(B) physical searches under section 304;

''(C) pen registers under section 402; and

''(D) access to records under section 501;

''(2) the number of individuals covered by an order issued under this Act who were determined pursuant to activities authorized by this Act to have acted wholly alone in the activities covered by such order;

''(3) the number of times that the Attorney General has authorized that information obtained under this Act may be used in a criminal proceeding or any information derived therefrom may be used in a criminal proceeding; and

''(4) in a manner consistent with the protection of the national security of the United States—

''(A) the portions of the documents and applications filed with the courts established under section 103 that include significant construction or interpretation of the provisions of this Act, not including the facts of any particular matter, which may be redacted;

''(B) the portions of the opinions and orders of the courts established under section 103 that include significant construction or interpretation of the provisions of this Act, not including the facts of any particular matter, which may be redacted.

''(b) The first report under this section shall be submitted not later than six months after the date of the enactment of this Act. Subsequent reports under this section shall be submitted annually thereafter.

''(c) In this section, the term 'appropriate committees of Congress' means—

''(1) the Select Committee on Intelligence and the Committee on the Judiciary of the Senate; and

''(2) the Permanent Select Committee on Intelligence and the Committee on the Judiciary of the House of Representatives.''.

''(b) CLERICAL AMENDMENT.—The table of contents for that Act is amended by striking the items relating to title VI and inserting the following new items:

''TITLE VI—REPORTING REQUIREMENT

''(Sec. 601. Annual report of the Attorney General.

''TITLE VII—EFFECTIVE DATE

''(Sec. 701. Effective date.''

SA 2147. Mr. CRAIG (for himself and Mr. HAGEL) submitted an amendment intended to be proposed by him to the bill H.R. 2799, making appropriations for the Departments of Commerce, Justice, and State, the Judicary, and related agencies for the fiscal year ending September 30, 2004, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. ___. DISTRICT JUDGESHIP FOR THE NORTHERN DISTRICT OF ALABAMA.

(a) ADDITIONAL PERMANENT DISTRICT JUDGESHIP.—The President shall appoint, by and with the advice and consent of the Senate, 1 additional district judge for the northern district of Alabama.

(b) TECHNICAL AND CONFORMING AMENDMENT.—The table under section 133(a) of title 28, United States Code, is amended by striking the item relating to Alabama and inserting the following:

''Alabama:

Northern	8
Middle	3
Southern	3.''.

SEC. ___. DISTRICT JUDGESHIPS FOR THE DISTRICT OF ARIZONA.

(a) ADDITIONAL PERMANENT DISTRICT JUDGESHIPS.—The President shall appoint, by and with the advice and consent of the Senate, 2 additional district judges for the district of Arizona.

(b) TECHNICAL AND CONFORMING AMENDMENT.—The table under section 133(a) of title 28, United States Code, is amended by striking the item relating to Arizona and inserting the following:

''Arizona	14.''.

SEC. ___. DISTRICT JUDGESHIPS FOR THE EASTERN AND SOUTHERN DISTRICTS OF CALIFORNIA.

(a) ADDITIONAL PERMANENT DISTRICT JUDGESHIPS.—The President shall appoint, by and with the advice and consent of the Senate—

(1) 3 additional district judges for the eastern district of California; and

(2) 1 additional district judge for the southern district of California.

(b) CONVERSION OF TEMPORARY JUDGESHIP TO PERMANENT JUDGESHIP.—The existing judgeship for the eastern district of California authorized by section 203(c) of the Judicial Improvements Act of 1990 (28 U.S.C. 133 note; Public Law 101–650) shall, as of the date of enactment of this Act, be authorized under section 133 of title 28, United States Code, and the incumbent in that office shall hold the office under section 133 of title 28, United States Code (as amended by this Act).

(c) TECHNICAL AND CONFORMING AMENDMENT.—

(1) IN GENERAL.—The table under section 133(a) of title 28, United States Code, is amended by striking the item relating to California and inserting the following:

''California:

Northern	14

Eastern 10
Central 27
Southern ..... 14.''.

(2) EFFECTIVE DATE.—This subsection shall take effect on the later of—

(A) the date of enactment of this Act; or

(B) July 16, 2003.

SEC. ___. DISTRICT JUDGESHIP FOR THE DISTRICT OF IDAHO.

(a) ADDITIONAL PERMANENT DISTRICT JUDGESHIP.—The President shall appoint, by and with the advice and consent of the Senate, 1 additional district judge for the district of Idaho.

(b) TECHNICAL AND CONFORMING AMENDMENT.—The table under section 133(a) of title 28, United States Code, is amended by striking the item relating to Idaho and inserting the following:

''Idaho ..... 3.''.

SEC. ___. TEMPORARY JUDGESHIP FOR THE NORTHERN DISTRICT OF IOWA.

(a) IN GENERAL.—The President shall appoint, by and with the advice and consent of the Senate, 1 additional judge for the northern district of Iowa.

(b) VACANCY NOT FILLED.—The first vacancy in the office of district judge in the northern district of Iowa occurring 10 years or more after the confirmation date of the judge named to fill the temporary district judgeship created by this subsection, shall not be filled.

SEC. ___. CONVERSION OF TEMPORARY JUDGESHIP TO PERMANENT JUDGESHIP FOR THE DISTRICT OF NEBRASKA.

(a) IN GENERAL.—The existing judgeship for the district of Nebraska authorized by section 203(c) of the Judicial Improvements Act of 1990 (28 U.S.C. 133 note; Public Law 101–650) shall, as of the date of enactment of this Act, be authorized under section 133 of title 28, United States Code, and the incumbent in that office shall hold the office under section 133 of title 28, United States Code (as amended by this Act).

(b) TECHNICAL AND CONFORMING AMENDMENTS.—The table under section 133(a) of title 28, United States Code, is amended by striking the item relating to Nebraska and inserting the following:

''Nebraska ..... 4.''.

SEC. ___. DISTRICT JUDGESHIPS FOR THE EASTERN DISTRICT OF NEW YORK.

(a) ADDITIONAL PERMANENT DISTRICT JUDGESHIPS.—The President shall appoint, by and with the advice and consent of the Senate, 2 additional district judges for the eastern district of New York.

(b) TECHNICAL AND CONFORMING AMENDMENT.—

(1) IN GENERAL.—The table under section 133(a) of title 28, United States Code, is amended by striking the item relating to New York and inserting the following:

''New York:
Northern 5
Southern 28
Eastern 17
Western ..... 4.''.

(2) EFFECTIVE DATE.—This subsection shall take effect on the later of—

(A) the date of enactment of this Act; or

(B) July 16, 2003.

SEC. ___. TEMPORARY JUDGESHIP FOR THE EASTERN DISTRICT OF NEW YORK.

(a) IN GENERAL.—The President shall appoint, by and with the advice and consent of the Senate 1 additional judge for the eastern district of New York.

(b) VACANCY NOT FILLED.—The first vacancy in the office of district judge in the eastern district of New York occurring 10 years or more after the confirmation date of the judge named to fill the temporary district judgeship created by this subsection, shall not be filled.

SEC. ___. DISTRICT JUDGESHIP FOR THE DISTRICT OF SOUTH CAROLINA.

(a) ADDITIONAL PERMANENT DISTRICT JUDGESHIP.—The President shall appoint, by and with the advice and consent of the Senate, 1 additional district judge for the district of South Carolina.

(b) TECHNICAL AND CONFORMING AMENDMENT.—The table under section 133(a) of title 28, United States Code, is amended by striking the item relating to South Carolina and inserting the following:

''South Carolina ..... 11.''.

SEC. ___. DISTRICT JUDGESHIP FOR THE DISTRICT OF UTAH.

(a) ADDITIONAL PERMANENT DISTRICT JUDGESHIP FOR THE DISTRICT OF UTAH.—The President shall appoint, by and with the advice and consent of the Senate, 1 additional district judge for the district of Utah.

(b) TECHNICAL AND CONFORMING AMENDMENTS.—The table under section 133(a) of title 28, United States Code, is amended by striking the item relating to Utah and inserting the following:

''Utah ..... 6.''.

NOTICES OF HEARINGS/MEETINGS

PERMANENT SUBCOMMITTEES ON INVESTIGATIONS

Mr. COLEMAN. Mr. President, I announce for the information of the Senate and the public that the Permanent Subcommittee on Investigations of the Committee on Governmental Affairs will hold two days of hearings entitled ''U.S. Tax Shelter Industry: The Role of Accountants, Lawyers and Financial Professionals.'' The Subcommittee's hearings will examine the role of professional organizations like accounting firms, law firms, and financial institutions in developing, marketing and implementing tax shelters.

The hearings will take place on Tuesday, November 18 and Thursday, November 20, at 9:30 a.m. each day in Room 216 of the Hart Senate Office Building. For further information, please contact Elise Bean, Staff Director and Chief Counsel to the Minority of the Permanent Subcommittee on Investigations, at 224–9505.

AGRICULTURE, RURAL DEVELOPMENT, FOOD AND DRUG ADMINISTRATION, AND RELATED AGENCIES APPROPRIATIONS ACT, 2004

On Thursday, November 6, 2003, the Senate passed H.R. 2673, as follows:

Resolved, That the bill from the House of Representatives (H.R. 2673) entitled ''An Act making appropriations for Agriculture, Rural Development, Food and Drug Administration, and Related Agencies for the fiscal year ending September 30, 2004, and for other purposes.'', do pass with the following amendment: Strike out all after the enacting clause and insert:

That the following sums are appropriated, out of any money in the Treasury not otherwise appropriated, for Agriculture, Rural Development, Food and Drug Administration, and Related Agencies programs for the fiscal year ending September 30, 2004, and for other purposes, namely:

TITLE I

AGRICULTURAL PROGRAMS

PRODUCTION, PROCESSING, AND MARKETING

OFFICE OF THE SECRETARY

For necessary expenses of the Office of the Secretary of Agriculture, $10,046,000: Provided, That not to exceed $11,000 of this amount shall be available for official reception and representation expenses, not otherwise provided for, as determined by the Secretary.

EXECUTIVE OPERATIONS

CHIEF ECONOMIST

For necessary expenses of the Chief Economist, including economic analysis, risk assessment, cost-benefit analysis, energy and new uses, and the functions of the World Agricultural Outlook Board, as authorized by the Agricultural Marketing Act of 1946 (7 U.S.C. 1622g), $8,707,000.

NATIONAL APPEALS DIVISION

For necessary expenses of the National Appeals Division, $13,997,000.

OFFICE OF BUDGET AND PROGRAM ANALYSIS

For necessary expenses of the Office of Budget and Program Analysis, $7,544,000.

HOMELAND SECURITY STAFF

For necessary expenses of the Homeland Security Staff, $910,000.

OFFICE OF THE CHIEF INFORMATION OFFICER

For necessary expenses of the Office of the Chief Information Officer, $15,710,000.

COMMON COMPUTING ENVIRONMENT

For necessary expenses to acquire a Common Computing Environment for the Natural Resources Conservation Service, the Farm and Foreign Agricultural Service and Rural Development mission areas for information technology, systems, and services, $118,789,000, to remain available until expended, for the capital asset acquisition of shared information technology systems, including services as authorized by 7 U.S.C. 6915–16 and 40 U.S.C. 1421–28: Provided, That obligation of these funds shall be consistent with the Department of Agriculture Service Center Modernization Plan of the county-based agencies, and shall be with the concurrence of the Department's Chief Information Officer.

OFFICE OF THE CHIEF FINANCIAL OFFICER

For necessary expenses of the Office of the Chief Financial Officer, $5,496,000: Provided, That the Chief Financial Officer shall actively market and expand cross-servicing activities of the National Finance Center.

OFFICE OF THE ASSISTANT SECRETARY FOR CIVIL RIGHTS

For necessary salaries and expenses of the Office of the Assistant Secretary for Civil Rights, $794,000.

OFFICE OF CIVIL RIGHTS

For necessary expenses of the Office of Civil Rights, $15,445,000.

OFFICE OF THE ASSISTANT SECRETARY FOR ADMINISTRATION

For necessary salaries and expenses of the Office of the Assistant Secretary for Administration, $673,000.

AGRICULTURE BUILDINGS AND FACILITIES AND RENTAL PAYMENTS

(INCLUDING TRANSFERS OF FUNDS)

For payment of space rental and related costs pursuant to Public Law 92–313, including authorities pursuant to the 1984 delegation of authority from the Administrator of General Services to the Department of Agriculture under 40 U.S.C. 486, for programs and activities of the Department which are included in this Act, and for alterations and other actions needed for the Department and its agencies to consolidate unneeded space into configurations suitable for release to the Administrator of General Services, and for the operation, maintenance, improvement, and repair of Agriculture buildings and

facilities, and for related costs, $187,022,000, to remain available until expended: Provided, That the Secretary of Agriculture may transfer a share of that agency's appropriation made available by this Act to this appropriation, or may transfer a share of this appropriation to that agency's appropriation to cover the costs of new or replacement space for such agency, but such transfers shall not exceed 5 percent of the funds made available for space rental and related costs to or from this account.

HAZARDOUS MATERIALS MANAGEMENT

(INCLUDING TRANSFERS OF FUNDS)

For necessary expenses of the Department of Agriculture, to comply with the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. 9601 et seq.) and the Resource Conservation and Recovery Act (42 U.S.C. 6901 et seq.), $15,611,000, to remain available until expended: Provided, That appropriations and funds available herein to the Department for Hazardous Materials Management may be transferred to any agency of the Department for its use in meeting all requirements pursuant to the above Acts on Federal and non-Federal lands.

DEPARTMENTAL ADMINISTRATION

(INCLUDING TRANSFERS OF FUNDS)

For Departmental Administration, $23,031,000, to provide for necessary expenses for management support services to offices of the Department and for general administration security, repairs and alterations, and other miscellaneous supplies and expenses not otherwise provided for and necessary for the practical and efficient work of the Department: Provided, That this appropriation shall be reimbursed from applicable appropriations in this Act for travel expenses incident to the holding of hearings as required by 5 U.S.C. 551–558: Provided further, That of such amount, sufficient funds shall be available for the Secretary of Agriculture, not later than 60 days after the last day of the fiscal year, to submit to Congress a report on the amount of acquisitions made by the Department of Agriculture during such fiscal year of articles, materials, or supplies that were manufactured outside the United States. Such report shall separately indicate the dollar value of any articles, materials, or supplies purchased by the Department of Agriculture that were manufactured outside the United States, an itemized list of all waivers under the Buy American Act (41 U.S.C. 10a et seq.) that were granted with respect to such articles, materials, or supplies, and a summary of total procurement funds spent on goods manufactured in the United States versus funds spent on goods manufactured outside of the United States. The Secretary of Agriculture shall make the report publicly available by posting the report on an Internet website.

OFFICE OF THE ASSISTANT SECRETARY FOR CONGRESSIONAL RELATIONS

(INCLUDING TRANSFERS OF FUNDS)

For necessary salaries and expenses of the Office of the Assistant Secretary for Congressional Relations to carry out the programs funded by this Act, including programs involving intergovernmental affairs and liaison within the executive branch, $3,825,000: Provided, That these funds may be transferred to agencies of the Department of Agriculture funded by this Act to maintain personnel at the agency level: Provided further, That no other funds appropriated to the Department by this Act shall be available to the Department for support of activities of congressional relations.

OFFICE OF COMMUNICATIONS

For necessary expenses to carry out services relating to the coordination of programs involving public affairs, for the dissemination of agricultural information, and the coordination of information, work, and programs authorized by Congress in the Department, $9,228,000: Provided, That not to exceed $2,000,000 may be used for farmers' bulletins.

OFFICE OF THE INSPECTOR GENERAL

For necessary expenses of the Office of the Inspector General, including employment pursuant to the Inspector General Act of 1978, $75,781,000, including such sums as may be necessary for contracting and other arrangements with public agencies and private persons pursuant to section 6(a)(9) of the Inspector General Act of 1978, and including not to exceed $125,000 for certain confidential operational expenses, including the payment of informants, to be expended under the direction of the Inspector General pursuant to Public Law 95–452 and section 1337 of Public Law 97–98.

OFFICE OF THE GENERAL COUNSEL

For necessary expenses of the Office of the General Counsel, $35,343,000.

OFFICE OF THE UNDER SECRETARY FOR RESEARCH, EDUCATION AND ECONOMICS

For necessary salaries and expenses of the Office of the Under Secretary for Research, Education and Economics to administer the laws enacted by the Congress for the Economic Research Service, the National Agricultural Statistics Service, the Agricultural Research Service, and the Cooperative State Research, Education, and Extension Service, $596,000.

ECONOMIC RESEARCH SERVICE

For necessary expenses of the Economic Research Service in conducting economic research and analysis, as authorized by the Agricultural Marketing Act of 1946 (7 U.S.C. 1621–1627) and other laws, $69,902,000.

NATIONAL AGRICULTURAL STATISTICS SERVICE

For necessary expenses of the National Agricultural Statistics Service in conducting statistical reporting and service work, including crop and livestock estimates, statistical coordination and improvements, marketing surveys, and the Census of Agriculture, as authorized by 7 U.S.C. 1621–1627 and 2204g, and other laws, $128,922,000, of which up to $25,279,000 shall be available until expended for the Census of Agriculture.

AGRICULTURAL RESEARCH SERVICE

SALARIES AND EXPENSES

For necessary expenses to enable the Agricultural Research Service to perform agricultural research and demonstration relating to production, utilization, marketing, and distribution (not otherwise provided for); home economics or nutrition and consumer use including the acquisition, preservation, and dissemination of agricultural information; and for acquisition of lands by donation, exchange, or purchase at a nominal cost not to exceed $100, and for land exchanges where the lands exchanged shall be of equal value or shall be equalized by a payment of money to the grantor which shall not exceed 25 percent of the total value of the land or interests transferred out of Federal ownership, $1,045,533,000: Provided, That appropriations hereunder shall be available for the operation and maintenance of aircraft and the purchase of not to exceed one for replacement only: Provided further, That appropriations hereunder shall be available pursuant to 7 U.S.C. 2250 for the construction, alteration, and repair of buildings and improvements, but unless otherwise provided, the cost of constructing any one building shall not exceed $375,000, except for headhouses or greenhouses which shall each be limited to $1,200,000, and except for 10 buildings to be constructed or improved at a cost not to exceed $750,000 each, and the cost of altering any one building during the fiscal year shall not exceed 10 percent of the current replacement value of the building or $375,000, whichever is greater: Provided further, That the limitations on alterations contained in this Act shall not apply to modernization or replacement of existing facilities at Beltsville, Maryland: Provided further, That appropriations hereunder shall be available for granting easements at the Beltsville Agricultural Research Center: Provided further, That the foregoing limitations shall not apply to replacement of buildings needed to carry out the Act of April 24, 1948 (21 U.S.C. 113a): Provided further, That funds may be received from any State, other political subdivision, organization, or individual for the purpose of establishing or operating any research facility or research project of the Agricultural Research Service, as authorized by law: Provided further, That all rights and title of the United States in the 1.0664-acre parcel of land including improvements, as recorded at Book 1320, Page 253, records of Larimer County, State of Colorado, shall be conveyed to the Board of Governors of the Colorado State University for the benefit of Colorado State University.

None of the funds appropriated under this heading shall be available to carry out research related to the production, processing or marketing of tobacco or tobacco products.

BUILDINGS AND FACILITIES

For acquisition of land, construction, repair, improvement, extension, alteration, and purchase of fixed equipment or facilities as necessary to carry out the agricultural research programs of the Department of Agriculture, where not otherwise provided, $46,000,000, to remain available until expended.

COOPERATIVE STATE RESEARCH, EDUCATION, AND EXTENSION SERVICE

RESEARCH AND EDUCATION ACTIVITIES

For payments to agricultural experiment stations, for cooperative forestry and other research, for facilities, and for other expenses, $617,575,000, as follows: to carry out the provisions of the Hatch Act of 1887 (7 U.S.C. 361a–i), $178,977,000; for grants for cooperative forestry research (16 U.S.C. 582a through a–7), $21,742,000; for payments to the 1890 land-grant colleges, including Tuskegee University and West Virginia State College (7 U.S.C. 3222), $35,411,000, of which $1,507,496 shall be made available only for the purpose of ensuring that each institution shall receive no less than $1,000,000; for special grants for agricultural research (7 U.S.C. 450i(c)), $101,637,000; for special grants for agricultural research on improved pest control (7 U.S.C. 450i(c)), $14,976,000; for competitive research grants (7 U.S.C. 450i(b)), $180,000,000; for the support of animal health and disease programs (7 U.S.C. 3195), $5,065,000; for supplemental and alternative crops and products (7 U.S.C. 3319d), $840,000; for grants for research pursuant to the Critical Agricultural Materials Act (7 U.S.C. 178 et seq.), $1,242,000, to remain available until expended; for research grants for 1994 institutions pursuant to section 536 of Public Law 103–382 (7 U.S.C. 301 note), $1,093,000, to remain available until expended; for higher education graduate fellowship grants (7 U.S.C. 3152(b)(6)), $3,222,000, to remain available until expended (7 U.S.C. 2209b); for higher education challenge grants (7 U.S.C. 3152(b)(1)), $4,888,000; for a higher education multicultural scholars program (7 U.S.C. 3152(b)(5)), $992,000, to remain available until expended (7 U.S.C. 2209b); for an education grants program for Hispanic-serving Institutions (7 U.S.C. 3241), $4,073,000; for noncompetitive grants for the purpose of carrying out all provisions of 7 U.S.C. 3242 (section 759 of Public Law 106–78) to individual eligible institutions or consortia of eligible institutions in Alaska and in Hawaii, with funds awarded equally to each of the States of Alaska and Hawaii, $3,500,000; for a secondary agriculture education program and 2-year post-secondary education (7 U.S.C. 3152(j)), $994,000; for aquaculture grants (7 U.S.C. 3322), $4,471,000; for sustainable agriculture research and education (7 U.S.C. 5811), $13,661,000; for a program of capacity building grants (7 U.S.C. 3152(b)(4)) to colleges eligible to receive funds under the Act of August 30, 1890 (7 U.S.C. 321–326 and 328), including Tuskegee University and West Virginia State College, $11,404,000, to remain available until expended

(7 U.S.C. 2209b); for payments to the 1994 Institutions pursuant to section 534(a)(1) of Public Law 103–382, $1,689,000; and for necessary expenses of Research and Education Activities, $26,698,000.

None of the funds in the foregoing paragraph shall be available to carry out research related to the production, processing or marketing of tobacco or tobacco products: Provided, That this paragraph shall not apply to research on the medical, biotechnological, food, and industrial uses of tobacco.

NATIVE AMERICAN INSTITUTIONS ENDOWMENT FUND

For the Native American Institutions Endowment Fund authorized by Public Law 103–382 (7 U.S.C. 301 note), $9,000,000.

EXTENSION ACTIVITIES

For payments to States, the District of Columbia, Puerto Rico, Guam, the Virgin Islands, Micronesia, Northern Marianas, and American Samoa, $450,084,000, as follows: payments for cooperative extension work under the Smith-Lever Act, to be distributed under sections 3(b) and 3(c) of said Act, and under section 208(c) of Public Law 93–471, for retirement and employees' compensation costs for extension agents and for costs of penalty mail for cooperative extension agents and State extension directors, $279,390,000; payments for extension work at the 1994 Institutions under the Smith-Lever Act (7 U.S.C. 343(b)(3)), $3,273,000; payments for the nutrition and family education program for low-income areas under section 3(d) of the Act, $58,185,000; payments for the pest management program under section 3(d) of the Act, $10,689,000; payments for the farm safety program under section 3(d) of the Act, $5,489,000; payments to upgrade research, extension, and teaching facilities at the 1890 land-grant colleges, including Tuskegee University and West Virginia State College, as authorized by section 1447 of Public Law 95–113 (7 U.S.C. 3222b), $14,903,000, to remain available until expended; payments for youth-at-risk programs under section 3(d) of the Smith-Lever Act, $8,426,000; for youth farm safety education and certification extension grants, to be awarded competitively under section 3(d) of the Act, $496,000; payments for carrying out the provisions of the Renewable Resources Extension Act of 1978 (16 U.S.C. 1671 et seq.), $4,516,000; payments for Indian reservation agents under section 3(d) of the Smith-Lever Act, $1,983,000; payments for sustainable agriculture programs under section 3(d) of the Act, $4,843,000; payments for rural health and safety education as authorized by section 502(i) of Public Law 92–419 (7 U.S.C. 2662(i)), $2,605,000; payments for cooperative extension work by the colleges receiving the benefits of the second Morrill Act (7 U.S.C. 321–326 and 328) and Tuskegee University and West Virginia State College, $31,908,000, of which $1,724,884 shall be made available only for the purpose of ensuring that each institution shall receive no less than $1,000,000; for grants to youth organizations pursuant to section 7630 of title 7, United States Code, $2,981,000; and for necessary expenses of extension activities, $20,397,000.

INTEGRATED ACTIVITIES

For the integrated research, education, and extension competitive grants programs, including necessary administrative expenses, as authorized under section 406 of the Agricultural Research, Extension, and Education Reform Act of 1998 (7 U.S.C. 7626), $46,711,000, as follows: payments for the water quality program, $12,887,000; payments for the food safety program, $14,870,000; payments for the regional pest management centers program, $4,502,000; payments for the Food Quality Protection Act risk mitigation program for major food crop systems, $4,857,000; payments for the crops affected by Food Quality Protection Act implementation, $1,487,000; payments for the methyl bromide transition program, $3,500,000; payments for the organic transition program, $2,111,000; payments for the international science and education grants program under 7 U.S.C. 3291, to remain available until expended, $497,000; payments for the critical issues program under 7 U.S.C. 450i(c): Provided, That of the funds made available under this heading, $497,000 shall be for payments for the critical issues program under 7 U.S.C. 450i(c) and $1,503,000 shall be for payments for the regional rural development centers program under 7 U.S.C. 450i(c).

OUTREACH FOR SOCIALLY DISADVANTAGED FARMERS

For grants and contracts pursuant to section 2501 of the Food, Agriculture, Conservation, and Trade Act of 1990 (7 U.S.C. 2279), $3,470,000, to remain available until expended.

OFFICE OF THE UNDER SECRETARY FOR MARKETING AND REGULATORY PROGRAMS

For necessary salaries and expenses of the Office of the Under Secretary for Marketing and Regulatory Programs to administer programs under the laws enacted by the Congress for the Animal and Plant Health Inspection Service; the Agricultural Marketing Service; and the Grain Inspection, Packers and Stockyards Administration; $736,000.

ANIMAL AND PLANT HEALTH INSPECTION SERVICE

SALARIES AND EXPENSES

(INCLUDING TRANSFERS OF FUNDS)

For expenses, not otherwise provided for, necessary to prevent, control, and eradicate pests and plant and animal diseases; to carry out inspection, quarantine, and regulatory activities; and to protect the environment, as authorized by law, $705,552,000, of which $4,112,000 shall be available for the control of outbreaks of insects, plant diseases, animal diseases and for control of pest animals and birds to the extent necessary to meet emergency conditions; of which $51,720,000 shall be used for the boll weevil eradication program for cost share purposes or for debt retirement for active eradication zones; and of which not less than $1,500,000 (in addition to any other funds made available for eradication or containment) shall be used by the Emerald Ash Borer Task Force for the removal of trees that have been adversely affected by the emerald ash borer, with a priority for the removal of trees on public property or that threaten public safety; and of which up to $275,000 may be used to control or alleviate the cormorant problem in the State of Michigan: Provided, That no funds shall be used to formulate or administer a brucellosis eradication program for the current fiscal year that does not require minimum matching by the States of at least 40 percent: Provided further, That this appropriation shall be available for the operation and maintenance of aircraft and the purchase of not to exceed four, of which two shall be for replacement only: Provided further, That, in addition, in emergencies which threaten any segment of the agricultural production industry of this country, the Secretary may transfer from other appropriations or funds available to the agencies or corporations of the Department such sums as may be deemed necessary, to be available only in such emergencies for the arrest and eradication of contagious or infectious disease or pests of animals, poultry, or plants, and for expenses in accordance with sections 10411 and 10417 of the Animal Health Protection Act (7 U.S.C. 8310 and 8316) and sections 431 and 442 of the Plant Protection Act (7 U.S.C. 7751 and 7772), and any unexpended balances of funds transferred for such emergency purposes in the preceding fiscal year shall be merged with such transferred amounts: Provided further, That appropriations hereunder shall be available pursuant to law (7 U.S.C. 2250) for the repair and alteration of leased buildings and improvements, but unless otherwise provided the cost of altering any one building during the fiscal year shall not exceed 10 percent of the current replacement value of the building.

In fiscal year 2004, the agency is authorized to collect fees to cover the total costs of providing technical assistance, goods, or services requested by States, other political subdivisions, domestic and international organizations, foreign governments, or individuals, provided that such fees are structured such that any entity's liability for such fees is reasonably based on the technical assistance, goods, or services provided to the entity by the agency, and such fees shall be credited to this account, to remain available until expended, without further appropriation, for providing such assistance, goods, or services.

BUILDINGS AND FACILITIES

For plans, construction, repair, preventive maintenance, environmental support, improvement, extension, alteration, and purchase of fixed equipment or facilities, as authorized by 7 U.S.C. 2250, and acquisition of land as authorized by 7 U.S.C. 428a, $4,996,000, to remain available until expended.

AGRICULTURAL MARKETING SERVICE

MARKETING SERVICES

For necessary expenses to carry out services related to consumer protection, agricultural marketing and distribution, transportation, and regulatory programs, as authorized by law, and for administration and coordination of payments to States, $75,263,000, including funds for the wholesale market development program for the design and development of wholesale and farmer market facilities for the major metropolitan areas of the country: Provided, That this appropriation shall be available pursuant to law (7 U.S.C. 2250) for the alteration and repair of buildings and improvements, but the cost of altering any one building during the fiscal year shall not exceed 10 percent of the current replacement value of the building: Provided further, That, in the case of the term of protection for the variety for which certificate number 8200179 was issued, on the date of enactment of this Act, the Secretary of Agriculture shall issue a new certificate for a term of protection of 10 years for the variety, except that the Secretary may terminate the certificate (at the end of any calendar year that is more than 5 years after the date of issuance of the certificate) if the Secretary determines that a new variety of seed (that is substantially based on the genetics of the variety for which the certificate was issued) is commercially viable and available in sufficient quantities to meet market demands.

Fees may be collected for the cost of standardization activities, as established by regulation pursuant to law (31 U.S.C. 9701).

LIMITATION ON ADMINISTRATIVE EXPENSES

Not to exceed $62,577,000 (from fees collected) shall be obligated during the current fiscal year for administrative expenses: Provided, That if crop size is understated and/or other uncontrollable events occur, the agency may exceed this limitation by up to 10 percent with notification to the Committees on Appropriations of both Houses of Congress.

FUNDS FOR STRENGTHENING MARKETS, INCOME, AND SUPPLY (SECTION 32)

(INCLUDING TRANSFERS OF FUNDS)

Funds available under section 32 of the Act of August 24, 1935 (7 U.S.C. 612c), shall be used only for commodity program expenses as authorized therein, and other related operating expenses, except for: (1) transfers to the Department of Commerce as authorized by the Fish and Wildlife Act of August 8, 1956; (2) transfers otherwise provided in this Act; and (3) not more than $15,392,000 for formulation and administration of marketing agreements and orders pursuant to the Agricultural Marketing Agreement Act of 1937 and the Agricultural Act of 1961.

PAYMENTS TO STATES AND POSSESSIONS

For payments to departments of agriculture, bureaus and departments of markets, and similar agencies for marketing activities under section 204(b) of the Agricultural Marketing Act of 1946 (7 U.S.C. 1623(b)), $3,338,000, of which not

less than $2,000,000 shall be used to make noncompetitive grants under this heading.

GRAIN INSPECTION, PACKERS AND STOCKYARDS ADMINISTRATION

SALARIES AND EXPENSES

For necessary expenses to carry out the provisions of the United States Grain Standards Act, for the administration of the Packers and Stockyards Act, for certifying procedures used to protect purchasers of farm products, and the standardization activities related to grain under the Agricultural Marketing Act of 1946, $35,638,000: Provided, That this appropriation shall be available pursuant to law (7 U.S.C. 2250) for the alteration and repair of buildings and improvements, but the cost of altering any one building during the fiscal year shall not exceed 10 percent of the current replacement value of the building.

LIMITATION ON INSPECTION AND WEIGHING SERVICES EXPENSES

Not to exceed $42,463,000 (from fees collected) shall be obligated during the current fiscal year for inspection and weighing services: Provided, That if grain export activities require additional supervision and oversight, or other uncontrollable factors occur, this limitation may be exceeded by up to 10 percent with notification to the Committees on Appropriations of both Houses of Congress.

OFFICE OF THE UNDER SECRETARY FOR FOOD SAFETY

For necessary salaries and expenses of the Office of the Under Secretary for Food Safety to administer the laws enacted by the Congress for the Food Safety and Inspection Service, $611,000.

FOOD SAFETY AND INSPECTION SERVICE

For necessary expenses to carry out services authorized by the Federal Meat Inspection Act, the Poultry Products Inspection Act, and the Egg Products Inspection Act, including not to exceed $50,000 for representation allowances and for expenses pursuant to section 8 of the Act approved August 3, 1956 (7 U.S.C. 1766), $783,761,000, of which no less than $701,103,000 shall be available for Federal food safety inspection; and in addition, $1,000,000 may be credited to this account from fees collected for the cost of laboratory accreditation as authorized by section 1327 of the Food, Agriculture, Conservation and Trade Act of 1990 (7 U.S.C. 138f): Provided, That no fewer than 50 full time equivalent positions above the fiscal year 2002 level shall be employed during fiscal year 2004 for purposes dedicated solely to inspections and enforcement related to the Humane Methods of Slaughter Act: Provided further, That this appropriation shall be available pursuant to law (7 U.S.C. 2250) for the alteration and repair of buildings and improvements, but the cost of altering any one building during the fiscal year shall not exceed 10 percent of the current replacement value of the building.

OFFICE OF THE UNDER SECRETARY FOR FARM AND FOREIGN AGRICULTURAL SERVICES

For necessary salaries and expenses of the Office of the Under Secretary for Farm and Foreign Agricultural Services to administer the laws enacted by Congress for the Farm Service Agency, the Foreign Agricultural Service, the Risk Management Agency, and the Commodity Credit Corporation, $635,000.

FARM SERVICE AGENCY

SALARIES AND EXPENSES

(INCLUDING TRANSFERS OF FUNDS)

For necessary expenses for carrying out the administration and implementation of programs administered by the Farm Service Agency, $988,768,000: Provided, That the Secretary is authorized to use the services, facilities, and authorities (but not the funds) of the Commodity Credit Corporation to make program payments for all programs administered by the Agency: Provided further, That other funds made available to the Agency for authorized activities may be advanced to and merged with this account.

STATE MEDIATION GRANTS

For grants pursuant to section 502(b) of the Agricultural Credit Act of 1987, as amended (7 U.S.C. 5101–5106), $3,974,000.

DAIRY INDEMNITY PROGRAM

(INCLUDING TRANSFER OF FUNDS)

For necessary expenses involved in making indemnity payments to dairy farmers and manufacturers of dairy products under a dairy indemnity program, $100,000, to remain available until expended: Provided, That such program is carried out by the Secretary in the same manner as the dairy indemnity program described in Public Law 106–387 (114 Stat. 1549A–12).

AGRICULTURAL CREDIT INSURANCE FUND PROGRAM ACCOUNT

(INCLUDING TRANSFERS OF FUNDS)

For gross obligations for the principal amount of direct and guaranteed farm ownership (7 U.S.C. 1922 et seq.) and operating (7 U.S.C. 1941 et seq.) loans, Indian tribe land acquisition loans (25 U.S.C. 488), and boll weevil loans (7 U.S.C. 1989), to be available from funds in the Agricultural Credit Insurance Fund, as follows: farm ownership loans, $1,079,158,000, of which $950,000,000 shall be for guaranteed loans and $129,158,000 shall be for direct loans; operating loans, $2,067,317,000, of which $1,200,000,000 shall be for unsubsidized guaranteed loans, $266,249,000 shall be for subsidized guaranteed loans and $601,068,000 shall be for direct loans; Indian tribe land acquisition loans, $2,000,000; and for boll weevil eradication program loans, $100,000,000: Provided, That the Secretary shall deem the pink bollworm to be a boll weevil for the purpose of boll weevil eradication program loans.

For the cost of direct and guaranteed loans, including the cost of modifying loans as defined in section 502 of the Congressional Budget Act of 1974, as follows: farm ownership loans, $33,648,000, of which $5,130,000 shall be for guaranteed loans, and $28,518,000 shall be for direct loans; operating loans, $160,634,000, of which $39,960,000 shall be for unsubsidized guaranteed loans, $34,000,000 shall be for subsidized guaranteed loans, and $86,674,000 shall be for direct loans.

In addition, for administrative expenses necessary to carry out the direct and guaranteed loan programs, $290,968,000, of which $283,020,000 shall be transferred to and merged with the appropriation for ''Farm Service Agency, Salaries and Expenses''.

Funds appropriated by this Act to the Agricultural Credit Insurance Program Account for farm ownership and operating direct loans and guaranteed loans may be transferred among these programs: Provided, That the Committees on Appropriations of both Houses of Congress are notified at least 15 days in advance of any transfer.

RISK MANAGEMENT AGENCY

For administrative and operating expenses, as authorized by section 226A of the Department of Agriculture Reorganization Act of 1994 (7 U.S.C. 6933), $71,422,000: Provided, That not to exceed $1,000 shall be available for official reception and representation expenses, as authorized by 7 U.S.C. 1506(i).

CORPORATIONS

The following corporations and agencies are hereby authorized to make expenditures, within the limits of funds and borrowing authority available to each such corporation or agency and in accord with law, and to make contracts and commitments without regard to fiscal year limitations as provided by section 104 of the Government Corporation Control Act as may be necessary in carrying out the programs set forth in the budget for the current fiscal year for such corporation or agency, except as hereinafter provided.

FEDERAL CROP INSURANCE CORPORATION FUND

For payments as authorized by section 516 of the Federal Crop Insurance Act (7 U.S.C. 1516), such sums as may be necessary, to remain available until expended.

COMMODITY CREDIT CORPORATION FUND

REIMBURSEMENT FOR NET REALIZED LOSSES

For the current fiscal year, such sums as may be necessary to reimburse the Commodity Credit Corporation for net realized losses sustained, but not previously reimbursed, pursuant to section 2 of the Act of August 17, 1961 (15 U.S.C. 713a–11).

HAZARDOUS WASTE MANAGEMENT

(LIMITATION ON EXPENSES)

For the current fiscal year, the Commodity Credit Corporation shall not expend more than $5,000,000 for site investigation and cleanup expenses, and operations and maintenance expenses to comply with the requirement of section 107(g) of the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. 9607(g)), and section 6001 of the Resource Conservation and Recovery Act (42 U.S.C. 6961).

TITLE II

CONSERVATION PROGRAMS

OFFICE OF THE UNDER SECRETARY FOR NATURAL RESOURCES AND ENVIRONMENT

For necessary salaries and expenses of the Office of the Under Secretary for Natural Resources and Environment to administer the laws enacted by the Congress for the Forest Service and the Natural Resources Conservation Service, $761,000.

NATURAL RESOURCES CONSERVATION SERVICE

CONSERVATION OPERATIONS

For necessary expenses for carrying out the provisions of the Act of April 27, 1935 (16 U.S.C. 590a–f), including preparation of conservation plans and establishment of measures to conserve soil and water (including farm irrigation and land drainage and such special measures for soil and water management as may be necessary to prevent floods and the siltation of reservoirs and to control agricultural related pollutants); operation of conservation plant materials centers; classification and mapping of soil; dissemination of information; acquisition of lands, water, and interests therein for use in the plant materials program by donation, exchange, or purchase at a nominal cost not to exceed $100 pursuant to the Act of August 3, 1956 (7 U.S.C. 428a); purchase and erection or alteration or improvement of permanent and temporary buildings; and operation and maintenance of aircraft, $826,635,000, to remain available until expended, of which not less than $9,500,000 is for snow survey and water forecasting, and not less than $11,269,000 is for operation and establishment of the plant materials centers, and of which not less than $23,500,000 shall be for the grazing lands conservation initiative: Provided, That appropriations hereunder shall be available pursuant to 7 U.S.C. 2250 for construction and improvement of buildings and public improvements at plant materials centers, except that the cost of alterations and improvements to other buildings and other public improvements shall not exceed $250,000: Provided further, That when buildings or other structures are erected on non-Federal land, that the right to use such land is obtained as provided in 7 U.S.C. 2250a: Provided further, That this appropriation shall be available for technical assistance and related expenses to carry out programs authorized by section 202(c) of title II of the Colorado River Basin Salinity Control Act of 1974 (43 U.S.C. 1592(c)): Provided further, That qualified local engineers may be temporarily employed at per diem rates to perform the technical planning work of the Service: Provided further, That none of the funds made available under this paragraph by this or any other appropriations Act may be used to provide technical assistance with respect to programs listed in section 1241(a) of the Food Security Act of 1985 (16 U.S.C. 3841(a)).

WATERSHED SURVEYS AND PLANNING

For necessary expenses to conduct research, investigation, and surveys of watersheds of rivers and other waterways, and for small watershed investigations and planning, in accordance with the Watershed Protection and Flood Prevention Act (16 U.S.C. 1001–1009), $10,000,000: Provided, That qualified local engineers may be temporarily employed at per diem rates to perform the technical planning work of the Service: Provided further, That none of the funds made available under this paragraph by this or any other appropriations Act may be used to provide technical assistance with respect to programs listed in section 1241(a) of the Food Security Act of 1985 (16 U.S.C. 3841(a)).

WATERSHED AND FLOOD PREVENTION OPERATIONS

For necessary expenses to carry out preventive measures, including but not limited to research, engineering operations, methods of cultivation, the growing of vegetation, rehabilitation of existing works and changes in use of land, in accordance with the Watershed Protection and Flood Prevention Act (16 U.S.C. 1001–1005 and 1007–1009), the provisions of the Act of April 27, 1935 (16 U.S.C. 590a–f), and in accordance with the provisions of laws relating to the activities of the Department, $55,000,000, to remain available until expended (of which up to $5,000,000 may be available for the watersheds authorized under the Flood Control Act (33 U.S.C. 701 and 16 U.S.C. 1006a)): Provided, That not to exceed $20,000,000 of this appropriation shall be available for technical assistance: Provided further, That not to exceed $1,000,000 of this appropriation is available to carry out the purposes of the Endangered Species Act of 1973 (Public Law 93–205), including cooperative efforts as contemplated by that Act to relocate endangered or threatened species to other suitable habitats as may be necessary to expedite project construction: Provided further, That qualified local engineers may be temporarily employed at per diem rates to perform the technical planning work of the Service: Provided further, That none of the funds made available under this paragraph by this or any other appropriations Act may be used to provide technical assistance with respect to programs listed in section 1241(a) of the Food Security Act of 1985 (16 U.S.C. 3841(a)).

WATERSHED REHABILITATION PROGRAM

For necessary expenses to carry out rehabilitation of structural measures, in accordance with section 14 of the Watershed Protection and Flood Prevention Act (16 U.S.C. 1012), and in accordance with the provisions of laws relating to the activities of the Department, $29,805,000, to remain available until expended: Provided, That qualified local engineers may be temporarily employed at per diem rates to perform the technical planning work of the Service: Provided further, That none of the funds made available under this paragraph by this or any other appropriations Act may be used to provide technical assistance with respect to programs listed in section 1241(a) of the Food Security Act of 1985 (16 U.S.C. 3841(a)).

RESOURCE CONSERVATION AND DEVELOPMENT

For necessary expenses in planning and carrying out projects for resource conservation and development and for sound land use pursuant to the provisions of sections 31 and 32 of the Bankhead-Jones Farm Tenant Act (7 U.S.C. 1010–1011; 76 Stat. 607); the Act of April 27, 1935 (16 U.S.C. 590a–f); and subtitle H of title XV of the Agriculture and Food Act of 1981 (16 U.S.C. 3451–3461), $51,000,000, to remain available until expended.

TITLE III

RURAL DEVELOPMENT PROGRAMS

OFFICE OF THE UNDER SECRETARY FOR RURAL DEVELOPMENT

For necessary salaries and expenses of the Office of the Under Secretary for Rural Development to administer programs under the laws enacted by the Congress for the Rural Housing Service, the Rural Business-Cooperative Service, and the Rural Utilities Service of the Department of Agriculture, $651,000.

RURAL COMMUNITY ADVANCEMENT PROGRAM

(INCLUDING TRANSFERS OF FUNDS)

For the cost of direct loans, loan guarantees, and grants, as authorized by 7 U.S.C. 1926, 1926a, 1926c, 1926d, and 1932, except for sections 381E–H and 381N of the Consolidated Farm and Rural Development Act, $767,479,000, to remain available until expended, of which $79,838,000 shall be for rural community programs described in section 381E(d)(1) of such Act; of which $610,641,000 shall be for the rural utilities programs described in sections 381E(d)(2), 306C(a)(2), and 306D of such Act; and of which $79,000,000 shall be for the rural business and cooperative development programs described in sections 381E(d)(3) and 310B(f) of such Act: Provided, That of the amount appropriated for rural business and cooperative development programs, $100,000 shall be for a pilot program in the State of Alaska to assist communities with community planning: Provided further, That of the total amount appropriated in this account, $24,000,000 shall be for loans and grants to benefit Federally Recognized Native American Tribes, including grants for drinking water and waste disposal systems pursuant to section 306C of such Act, of which $4,000,000 shall be available for community facilities grants to tribal colleges, as authorized by section 306(a)(19) of the Consolidated Farm and Rural Development Act, and of which $250,000 shall be available for a grant to a qualified national organization to provide technical assistance for rural transportation in order to promote economic development: Provided further, That of the amount appropriated for rural community programs, $6,000,000 shall be available for a Rural Community Development Initiative: Provided further, That such funds shall be used solely to develop the capacity and ability of private, nonprofit community-based housing and community development organizations, low-income rural communities, and Federally Recognized Native American Tribes to undertake projects to improve housing, community facilities, community and economic development projects in rural areas: Provided further, That such funds shall be made available to qualified private, nonprofit and public intermediary organizations proposing to carry out a program of financial and technical assistance: Provided further, That such intermediary organizations shall provide matching funds from other sources, including Federal funds for related activities, in an amount not less than funds provided: Provided further, That of the amount appropriated for the rural business and cooperative development programs, not to exceed $500,000 shall be made available for a grant to a qualified national organization to provide technical assistance for rural transportation in order to promote economic development; $2,000,000 shall be for grants to the Delta Regional Authority (7 U.S.C. 1921 et seq.); and not less than $5,000,000 shall be available for grants in accordance with section 310B(f) of the Consolidated Farm and Rural Development Act: Provided further, That of the amount appropriated for rural utilities programs, not to exceed $25,000,000 shall be for water and waste disposal systems to benefit the Colonias along the United States/Mexico border, including grants pursuant to section 306C of such Act; not to exceed $30,000,000 shall be for water and waste disposal systems for rural and native villages in Alaska pursuant to section 306D of such Act, with up to 1 percent available to administer the program and up to 1 percent available to improve interagency coordination may be transferred to and merged with the appropriation for ''Rural Development, Salaries and Expenses'', of which 25 percent shall be provided for water and sewer projects in regional hubs and $100,000 shall be provided to develop a regional system for centralized billing, operation, and management of rural water and sewer utilities through regional cooperatives, and the State of Alaska shall provide a 25 percent cost share; not to exceed $18,000,000 shall be for technical assistance grants for rural water and waste systems pursuant to section 306(a)(14) of such Act, of which $5,513,000 shall be for Rural Community Assistance Programs; and not to exceed $13,000,000 shall be for contracting with qualified national organizations for a circuit rider program to provide technical assistance for rural water systems: Provided further, That of the amount appropriated for the circuit rider program, Alaska shall receive no less than five percent and not less than $750,000 shall be for contracting with qualified national organizations to establish a Native American circuit rider program to provide technical assistance for rural water systems: Provided further, That not less than $2,000,000 shall be available to carry out Section 6012 of Public Law 107–171: Provided further, That of the total amount appropriated, not to exceed $22,132,000 shall be available through June 30, 2004, for authorized empowerment zones and enterprise communities and communities designated by the Secretary of Agriculture as Rural Economic Area Partnership Zones; of which $1,000,000 shall be for the rural community programs described in section 381E(d)(1) of such Act, of which $12,582,000 shall be for the rural utilities programs described in section 381E(d)(2) of such Act, and of which $8,550,000 shall be for the rural business and cooperative development programs described in section 381E(d)(3) of such Act: Provided further, That of the amount appropriated for rural community programs, not to exceed $23,000,000 shall be to provide grants for facilities in rural communities with extreme unemployment and severe economic depression (Public Law 106–387), with 5 percent for administration and capacity building in the State rural development offices: Provided further, That of the amount appropriated, $30,000,000 shall be transferred to and merged with the ''Rural Utilities Service, High Energy Cost Grants Account'' to provide grants authorized under section 19 of the Rural Electrification Act of 1936 (7 U.S.C. 918a): Provided further, That of the amount made available for high energy cost grants, up to $3,000,000 shall be available to a not-for-profit consumer-owned cooperative utility provider serving an island community in a non-contiguous State for the purpose of defraying transaction, transition, organizational, and other fair and reasonable costs, as determined by the Secretary, incurred during the period July 1, 1999 through December 31, 2002, and directly related to the successful acquisition by such provider of the investor-owned electric utility facilities (including generation, transmission, distribution, and other related assets) formerly serving ratepayers on the island: Provided further, That any prior year balances for high cost energy grants authorized by section 19 of the Rural Electrification Act of 1936 (7 U.S.C. 901(19)) shall be transferred to and merged with the ''Rural Utilities Service, High Energy Costs Grants'' account.

RURAL DEVELOPMENT SALARIES AND EXPENSES

(INCLUDING TRANSFERS OF FUNDS)

For necessary expenses for carrying out the administration and implementation of programs in the Rural Development mission area, including activities with institutions concerning the development and operation of agricultural cooperatives; and for cooperative agreements; $140,922,000: Provided, That notwithstanding any other provision of law, funds appropriated under this section may be used for advertising and promotional campaigns, including souvenirs, that support activities conducted by agencies of the Rural Development mission area: Provided further, That not more than $10,000 may be expended to provide modest nonmonetary awards to non-USDA employees: Provided further, That any balances available from prior

years for the Rural Utilities Service, Rural Housing Service, and the Rural Business-Cooperative Service salaries and expenses accounts shall be transferred to and merged with this appropriation.

RURAL HOUSING SERVICE

RURAL HOUSING INSURANCE FUND PROGRAM ACCOUNT

(INCLUDING TRANSFERS OF FUNDS)

For gross obligations for the principal amount of direct and guaranteed loans as authorized by title V of the Housing Act of 1949, to be available from funds in the rural housing insurance fund, as follows: $4,084,589,000 for loans to section 502 borrowers, as determined by the Secretary, of which $1,359,417,000 shall be for direct loans, and of which $2,725,172,000 shall be for unsubsidized guaranteed loans; $35,004,000 for section 504 housing repair loans; $115,052,000 for section 515 rental housing; $100,000,000 for section 538 guaranteed multi-family housing loans; $5,045,000 for section 524 site loans; $11,500,000 for credit sales of acquired property, of which up to $1,500,000 may be for multi-family credit sales; and $1,623,000 for section 523 self-help housing land development loans.

For the cost of direct and guaranteed loans, including the cost of modifying loans, as defined in section 502 of the Congressional Budget Act of 1974, as follows: section 502 loans, $165,921,000, of which $126,018,000 shall be for direct loans, and of which $39,903,000, to remain available until expended, shall be for unsubsidized guaranteed loans; section 504 housing repair loans, $9,612,000; section 515 rental housing, $49,484,000; section 538 multi-family housing guaranteed loans, $5,950,000; multi-family credit sales of acquired property, $663,000; and section 523 self-help housing land development loans, $50,000: Provided, That of the total amount appropriated in this paragraph, $7,100,000 shall be available through June 30, 2004, for authorized empowerment zones and enterprise communities and communities designated by the Secretary of Agriculture as Rural Economic Area Partnership Zones.

In addition, for administrative expenses necessary to carry out the direct and guaranteed loan programs, $439,453,000, which shall be transferred to and merged with the appropriation for ''Rural Development, Salaries and Expenses''.

RENTAL ASSISTANCE PROGRAM

For rental assistance agreements entered into or renewed pursuant to the authority under section 521(a)(2) or agreements entered into in lieu of debt forgiveness or payments for eligible households as authorized by section 502(c)(5)(D) of the Housing Act of 1949, $721,281,000; and, in addition, such sums as may be necessary, as authorized by section 521(c) of the Act, to liquidate debt incurred prior to fiscal year 1992 to carry out the rental assistance program under section 521(a)(2) of the Act: Provided, That of this amount, not more than $5,900,000 shall be available for debt forgiveness or payments for eligible households as authorized by section 502(c)(5)(D) of the Act, and not to exceed $20,000 per project for advances to nonprofit organizations or public agencies to cover direct costs (other than purchase price) incurred in purchasing projects pursuant to section 502(c)(5)(C) of the Act: Provided further, That agreements entered into or renewed during the current fiscal year shall be funded for a 5-year period, although the life of any such agreement may be extended to fully utilize amounts obligated.

MUTUAL AND SELF-HELP HOUSING GRANTS

For grants and contracts pursuant to section 523(b)(1)(A) of the Housing Act of 1949 (42 U.S.C. 1490c), $34,000,000, to remain available until expended: Provided, That of the total amount appropriated, $1,000,000 shall be available through June 30, 2004, for authorized empowerment zones and enterprise communities and communities designated by the Secretary of Agriculture as Rural Economic Area Partnership Zones.

RURAL HOUSING ASSISTANCE GRANTS

For grants and contracts for very low-income housing repair, supervisory and technical assistance, compensation for construction defects, and rural housing preservation made by the Rural Housing Service, as authorized by 42 U.S.C. 1474, 1479(c), 1490e, and 1490m, $46,222,000, to remain available until expended, of which $5,000,000 shall be available for a processing and/or fishery workers housing demonstration project in Alaska, Mississippi, Utah, and Wisconsin: Provided, That of the total amount appropriated, $1,800,000 shall be available through June 30, 2004, for authorized empowerment zones and enterprise communities and communities designated by the Secretary of Agriculture as Rural Economic Area Partnership Zones.

FARM LABOR PROGRAM ACCOUNT

For the cost of direct loans, grants, and contracts, as authorized by 42 U.S.C. 1484 and 1486, $33,015,000, to remain available until expended, for direct farm labor housing loans and domestic farm labor housing grants and contracts.

HISTORIC BARN PRESERVATION PROGRAM

For the historic barn preservation program established under section 379A of the Consolidated Farm and Rural Development Act (7 U.S.C. 2008o), $2,000,000.

RURAL BUSINESS—COOPERATIVE SERVICE

RURAL DEVELOPMENT LOAN FUND PROGRAM ACCOUNT

(INCLUDING TRANSFER OF FUNDS)

For the principal amount of direct loans, as authorized by the Rural Development Loan Fund (42 U.S.C. 9812(a)), $40,000,000.

For the cost of direct loans, $17,308,000, as authorized by the Rural Development Loan Fund (42 U.S.C. 9812(a)), of which $1,724,000 shall be available through June 30, 2004, for Federally Recognized Native American Tribes and of which $3,449,000 shall be available through June 30, 2004, for Delta Regional Authority (7 U.S.C. 1921 et seq.): Provided, That such costs, including the cost of modifying such loans, shall be as defined in section 502 of the Congressional Budget Act of 1974: Provided further, That of the total amount appropriated, $2,447,000 shall be available through June 30, 2004, for the cost of direct loans for authorized empowerment zones and enterprise communities and communities designated by the Secretary of Agriculture as Rural Economic Area Partnership Zones.

In addition, for administrative expenses to carry out the direct loan programs, $4,283,000 shall be transferred to and merged with the appropriation for ''Rural Development, Salaries and Expenses''.

RURAL ECONOMIC DEVELOPMENT LOANS PROGRAM ACCOUNT

(INCLUDING RESCISSION OF FUNDS)

For the principal amount of direct loans, as authorized under section 313 of the Rural Electrification Act, for the purpose of promoting rural economic development and job creation projects, $15,002,000.

For the cost of direct loans, including the cost of modifying loans as defined in section 502 of the Congressional Budget Act of 1974, $2,792,000.

Of the funds derived from interest on the cushion of credit payments in the current fiscal year, as authorized by section 313 of the Rural Electrification Act of 1936, $3,000,000 shall not be obligated and $3,000,000 are rescinded.

RURAL COOPERATIVE DEVELOPMENT GRANTS

For rural cooperative development grants authorized under section 310B(e) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1932), $8,967,000, of which $2,500,000 shall be for cooperative agreements for the appropriate technology transfer for rural areas program: Provided, That not to exceed $1,500,000 of the total amount appropriated shall be made available to cooperatives or associations of cooperatives whose primary focus is to provide assistance to small, minority producers and whose governing board and/or membership is comprised of at least 75 percent minority.

RURAL EMPOWERMENT ZONES AND ENTERPRISE COMMUNITIES GRANTS

For grants in connection with second and third rounds of empowerment zones and enterprise communities, $14,370,000, to remain available until expended, for designated rural empowerment zones and rural enterprise communities, as authorized by the Taxpayer Relief Act of 1997 and the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999 (Public Law 105–277): Provided, That of the funds appropriated, $1,000,000 shall be made available to third round empowerment zones, as authorized by the Community Renewal Tax Relief Act (Public Law 106–554).

RENEWABLE ENERGY PROGRAM

For the cost of a program of direct loans and grants, under the same terms and conditions as authorized by section 9006 of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 8106), $23,000,000 for direct renewable energy loans and grants: Provided, That the cost of direct loans and loan guarantees, including the cost of modifying such loans, shall be as defined in section 502 of the Congressional Budget Act of 1974.

RURAL UTILITIES SERVICE

RURAL ELECTRIFICATION AND TELECOMMUNICATIONS LOANS PROGRAM ACCOUNT

(INCLUDING TRANSFER OF FUNDS)

Insured loans pursuant to the authority of section 305 of the Rural Electrification Act of 1936 (7 U.S.C. 935) shall be made as follows: 5 percent rural electrification loans, $240,000,000; municipal rate rural electric loans, $1,000,000,000; loans made pursuant to section 306 of that Act, rural electric, $2,000,000,000; Treasury rate direct electric loans, $750,000,000; 5 percent rural telecommunications loans, $145,000,000; cost of money rural telecommunications loans, $250,000,000; loans made pursuant to section 306 of that Act, rural telecommunications loans, $120,000,000; and for guaranteed underwriting loans pursuant to section 313A, $1,000,000,000.

For the cost, as defined in section 502 of the Congressional Budget Act of 1974, including the cost of modifying loans, of direct and guaranteed loans authorized by sections 305 and 306 of the Rural Electrification Act of 1936 (7 U.S.C. 935 and 936), as follows: cost of rural electric loans, $60,000, and the cost of telecommunication loans, $125,000: Provided, That notwithstanding section 305(d)(2) of the Rural Electrification Act of 1936, borrower interest rates may exceed 7 percent per year.

In addition, for administrative expenses necessary to carry out the direct and guaranteed loan programs, $37,920,000 which shall be transferred to and merged with the appropriation for ''Rural Development, Salaries and Expenses''.

RURAL TELEPHONE BANK PROGRAM ACCOUNT

(INCLUDING TRANSFER OF FUNDS)

The Rural Telephone Bank is hereby authorized to make such expenditures, within the limits of funds available to such corporation in accord with law, and to make such contracts and commitments without regard to fiscal year limitations as provided by section 104 of the Government Corporation Control Act, as may be necessary in carrying out its authorized programs. During fiscal year 2004 and within the resources and authority available, gross obligations for the principal amount of direct loans shall be $173,503,000.

In addition, for administrative expenses, including audits, necessary to carry out the loan programs, $3,182,000, which shall be transferred to and merged with the appropriation for ''Rural Development, Salaries and Expenses''.

DISTANCE LEARNING, TELEMEDICINE, AND BROADBAND PROGRAM

For the principal amount of direct distance learning and telemedicine loans, $300,000,000; and for the principal amount of broadband telecommunications loans, $647,000,000.

For grants for telemedicine and distance learning services in rural areas, as authorized by 7 U.S.C. 950aaa et seq., $40,000,000, to remain available until expended: Provided, That $15,000,000 shall be made available to convert analog to digital operation those noncommercial educational television broadcast stations that serve rural areas and are qualified for Community Service Grants by the Corporation for Public Broadcasting under section 396(k) of the Communications Act of 1934, including associated translators, repeaters, and studio-to-transmitter links.

For the cost of direct and guaranteed broadband loans, as authorized by 7 U.S.C. 901, et seq., $15,116,000: Provided, That the cost of direct loans shall be as defined in section 502 of the Congressional Budget Act of 1974.

In addition, $10,000,000, to remain available until expended, for a grant program to finance broadband transmission in rural areas eligible for Distance Learning and Telemedicne Program benefits authorized by 7 U.S.C. 950aaa.

TITLE IV

DOMESTIC FOOD PROGRAMS

OFFICE OF THE UNDER SECRETARY FOR FOOD, NUTRITION AND CONSUMER SERVICES

For necessary salaries and expenses of the Office of the Under Secretary for Food, Nutrition and Consumer Services to administer the laws enacted by the Congress for the Food and Nutrition Service, $611,000.

FOOD AND NUTRITION SERVICE

CHILD NUTRITION PROGRAMS

(INCLUDING TRANSFER OF FUNDS)

For necessary expenses to carry out the National School Lunch Act (42 U.S.C. 1751 et seq.), except section 21, and the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.), except sections 17 and 21; $11,418,441,000, to remain available through September 30, 2005, of which $6,718,780,000 is hereby appropriated and $4,699,661,000 shall be derived by transfer from funds available under section 32 of the Act of August 24, 1935 (7 U.S.C. 612c): Provided, That none of the funds made available under this heading shall be used for studies and evaluations: Provided further, That up to $5,235,000 shall be available for independent verification of school food service claims.

SPECIAL SUPPLEMENTAL NUTRITION PROGRAM FOR WOMEN, INFANTS, AND CHILDREN (WIC)

For necessary expenses to carry out the special supplemental nutrition program as authorized by section 17 of the Child Nutrition Act of 1966 (42 U.S.C. 1786), $4,639,232,000, to remain available through September 30, 2005, of which $10,000,000 shall be for a breastfeeding support initiative in addition to the activities specified in section 17(h)(3)(A) and $30,000,000 shall be for a management information system initiative: Provided, That of the total amount available, the Secretary shall obligate $25,000,000 for the farmers' market nutrition program: Provided further, That notwithstanding section 17(h)(10)(A) of such Act, $14,000,000 shall be available for the purposes specified in section 17(h)(10)(B): Provided further, That notwithstanding section 17(g)(5) of such Act, $5,000,000 shall be available for pilot projects to prevent childhood obesity: Provided further, That none of the funds in this Act shall be available to pay administrative expenses of WIC clinics except those that have an announced policy of prohibiting smoking within the space used to carry out the program: Provided further, That none of the funds provided in this account shall be available for the purchase of infant formula except in accordance with the cost containment and competitive bidding requirements specified in section 17 of such Act: Provided further, That none of the funds provided shall be available for activities that are not fully reimbursed by other Federal Government departments or agencies unless authorized by section 17 of such Act.

FOOD STAMP PROGRAM

For necessary expenses to carry out the Food Stamp Act (7 U.S.C. 2011 et seq.), $29,945,981,000, of which $2,000,000,000 shall be placed in reserve for use only in such amounts and at such times as may become necessary to carry out program operations: Provided, That none of the funds made available under this heading shall be used for studies and evaluations: Provided further, That of the funds made available under this heading and not already appropriated to the Food Distribution Program on Indian Reservations (FDPIR) established under section 4(b) of the Food Stamp Act of 1977 (7 U.S.C. 2013(b)), not to exceed $4,000,000 shall be used to purchase bison meat for the FDPIR from Native American bison producers as well as from producer-owned cooperatives of bison ranchers: Provided further, That funds provided herein shall be expended in accordance with section 16 of the Food Stamp Act: Provided further, That this appropriation shall be subject to any work registration or workfare requirements as may be required by law: Provided further, That funds made available for Employment and Training under this heading shall remain available until expended, as authorized by section 16(h)(1) of the Food Stamp Act.

COMMODITY ASSISTANCE PROGRAM

For necessary expenses to carry out disaster assistance and the commodity supplemental food program as authorized by section 4(a) of the Agriculture and Consumer Protection Act of 1973 (7 U.S.C. 612c note); the Emergency Food Assistance Act of 1983; and special assistance (in a form determined by the Secretary of Agriculture) for the nuclear affected islands, as authorized by section 103(h)(2) of the Compact of Free Association Act of 1985 (48 U.S.C. 1903(h)(2)) (or a successor law), $145,740,000, to remain available through September 30, 2005: Provided, That none of these funds shall be available to reimburse the Commodity Credit Corporation for commodities donated to the program.

NUTRITION PROGRAMS ADMINISTRATION

For necessary administrative expenses of the domestic nutrition assistance programs funded under this Act, $138,304,000, of which $5,000,000 shall be available only for simplifying procedures, reducing overhead costs, tightening regulations, improving food stamp benefit delivery, and assisting in the prevention, identification, and prosecution of fraud and other violations of law; and of which not less than $4,000,000 shall be available to improve integrity in the Food Stamp and Child Nutrition programs.

TITLE V

FOREIGN ASSISTANCE AND RELATED PROGRAMS

FOREIGN AGRICULTURAL SERVICE

SALARIES AND EXPENSES

(INCLUDING TRANSFERS OF FUNDS)

For necessary expenses of the Foreign Agricultural Service, including carrying out title VI of the Agricultural Act of 1954 (7 U.S.C. 1761–1769), market development activities abroad, and for enabling the Secretary to coordinate and integrate activities of the Department in connection with foreign agricultural work, including not to exceed $158,000 for representation allowances and for expenses pursuant to section 8 of the Act approved August 3, 1956 (7 U.S.C. 1766), $131,648,000: Provided, That the Service may utilize advances of funds, or reimburse this appropriation for expenditures made on behalf of Federal agencies, public and private organizations and institutions under agreements executed pursuant to the agricultural food production assistance programs (7 U.S.C. 1737) and the foreign assistance programs of the United States Agency for International Development.

PUBLIC LAW 480 TITLE I PROGRAM ACCOUNT

(INCLUDING TRANSFERS OF FUNDS)

For the cost, as defined in section 502 of the Congressional Budget Act of 1974, of agreements under the Agricultural Trade Development and Assistance Act of 1954, and the Food for Progress Act of 1985, including the cost of modifying credit arrangements under said Acts, $103,887,000, to remain available until expended.

In addition, for administrative expenses to carry out the credit program of title I, Public Law 83–480, and the Food for Progress Act of 1985, to the extent funds appropriated for Public Law 83–480 are utilized, $2,134,000, of which $1,075,000 may be transferred to and merged with the appropriation for ''Foreign Agricultural Service, Salaries and Expenses'', and of which $1,059,000 may be transferred to and merged with the appropriation for ''Farm Service Agency, Salaries and Expenses''.

PUBLIC LAW 480 TITLE I OCEAN FREIGHT DIFFERENTIAL GRANTS

(INCLUDING TRANSFER OF FUNDS)

For ocean freight differential costs for the shipment of agricultural commodities under title I of the Agricultural Trade Development and Assistance Act of 1954 and under the Food for Progress Act of 1985, $28,000,000, to remain available until expended: Provided, That funds made available for the cost of agreements under title I of the Agricultural Trade Development and Assistance Act of 1954 and for title I ocean freight differential may be used interchangeably between the two accounts with prior notice to the Committees on Appropriations of both Houses of Congress.

PUBLIC LAW 480 TITLE II GRANTS

For expenses during the current fiscal year, not otherwise recoverable, and unrecovered prior years' costs, including interest thereon, under the Agricultural Trade Development and Assistance Act of 1954, for commodities supplied in connection with dispositions abroad under title II of said Act, $1,192,000,000, to remain available until expended.

MC GOVERN-DOLE INTERNATIONAL FOOD FOR EDUCATION AND CHILD NUTRITION PROGRAM GRANTS

For necessary expenses to carry out the provisions of section 3107 of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 1736o–1), $25,000,000, to remain available until expended: Provided, That the Commodity Credit Corporation is authorized to provide the services, facilities, and authorities for the purpose of implementing such section, subject to reimbursement from amounts provided herein.

COMMODITY CREDIT CORPORATION EXPORT LOANS PROGRAM ACCOUNT

(INCLUDING TRANSFERS OF FUNDS)

For administrative expenses to carry out the Commodity Credit Corporation's export guarantee program, GSM 102 and GSM 103, $4,152,000; to cover common overhead expenses as permitted by section 11 of the Commodity Credit Corporation Charter Act and in conformity with the Federal Credit Reform Act of 1990, of which $3,306,000 may be transferred to and merged with the appropriation for ''Foreign Agricultural Service, Salaries and Expenses'', and of which $846,000 may be transferred to and merged with the appropriation for ''Farm Service Agency, Salaries and Expenses''.

TITLE VI

RELATED AGENCIES AND FOOD AND DRUG ADMINISTRATION

DEPARTMENT OF HEALTH AND HUMAN SERVICES

FOOD AND DRUG ADMINISTRATION

SALARIES AND EXPENSES

For necessary expenses of the Food and Drug Administration, including hire and purchase of passenger motor vehicles; for payment of space rental and related costs pursuant to Public Law

92–313 for programs and activities of the Food and Drug Administration which are included in this Act; for rental of special purpose space in the District of Columbia or elsewhere; and for miscellaneous and emergency expenses of enforcement activities, authorized and approved by the Secretary and to be accounted for solely on the Secretary's certificate, not to exceed $25,000; $1,663,228,000, of which not to exceed $249,825,000 to be derived from prescription drug user fees authorized by 21 U.S.C. 379h, including any such fees assessed prior to the current fiscal year but credited during the current year, in accordance with section 736(g)(4), shall be credited to this appropriation and remain available until expended; and of which not to exceed $29,190,000 to be derived from medical device user fees authorized by 21 U.S.C. 379j shall be credited to this appropriation, to remain available until expended: Provided, That fees derived from applications received during fiscal year 2004 shall be subject to the fiscal year 2004 limitation: Provided further, That none of these funds shall be used to develop, establish, or operate any program of user fees authorized by 31 U.S.C. 9701: Provided further, That of the total amount appropriated: (1) $412,020,000 shall be for the Center for Food Safety and Applied Nutrition and related field activities in the Office of Regulatory Affairs; (2) $475,655,000 shall be for the Center for Drug Evaluation and Research and related field activities in the Office of Regulatory Affairs, of which no less than $13,270,000 shall be available for grants and contracts awarded under section 5 of the Orphan Drug Act (21 U.S.C. 360ee) and of which no less than $52,845,000 shall be available for the generic drugs program; (3) $168,836,000 shall be for the Center for Biologics Evaluation and Research and for related field activities in the Office of Regulatory Affairs; (4) $84,646,000 shall be for the Center for Veterinary Medicine and for related field activities in the Office of Regulatory Affairs; (5) $207,686,000 shall be for the Center for Devices and Radiological Health and for related field activities in the Office of Regulatory Affairs; (6) $39,887,000 shall be for the National Center for Toxicological Research; (7) $40,851,000 shall be for Rent and Related activities, other than the amounts paid to the General Services Administration for rent; (8) $119,152,000 shall be for payments to the General Services Administration for rent; and (9) $114,495,000 shall be for other activities, including the Office of the Commissioner; the Office of Management and Systems; the Office of External Relations; the Office of Policy, Legislation, and Planning; and central services for these offices: Provided further, That funds may be transferred from one specified activity to another with the prior approval of the Committees on Appropriations of both Houses of Congress.

In addition, mammography user fees authorized by 42 U.S.C. 263b may be credited to this account, to remain available until expended.

In addition, export certification user fees authorized by 21 U.S.C. 381 may be credited to this account, to remain available until expended.

BUILDINGS AND FACILITIES

For plans, construction, repair, improvement, extension, alteration, and purchase of fixed equipment or facilities of or used by the Food and Drug Administration, where not otherwise provided, $7,948,000, to remain available until expended.

INDEPENDENT AGENCIES

COMMODITY FUTURES TRADING COMMISSION

For necessary expenses to carry out the provisions of the Commodity Exchange Act (7 U.S.C. 1 et seq.), including the purchase and hire of passenger motor vehicles, and the rental of space (to include multiple year leases) in the District of Columbia and elsewhere, $88,435,000, including not to exceed $3,000 for official reception and representation expenses.

FARM CREDIT ADMINISTRATION

LIMITATION ON ADMINISTRATIVE EXPENSES

Not to exceed $40,900,000 (from assessments collected from farm credit institutions and from the Federal Agricultural Mortgage Corporation) shall be obligated during the current fiscal year for administrative expenses as authorized under 12 U.S.C. 2249: Provided, That this limitation shall not apply to expenses associated with receiverships.

TITLE VII—GENERAL PROVISIONS

SEC. 701. Within the unit limit of cost fixed by law, appropriations and authorizations made for the Department of Agriculture for the current fiscal year under this Act shall be available for the purchase, in addition to those specifically provided for, of not to exceed 398 passenger motor vehicles, of which 396 shall be for replacement only, and for the hire of such vehicles.

SEC. 702. Funds in this Act available to the Department of Agriculture shall be available for uniforms or allowances therefor as authorized by law (5 U.S.C. 5901–5902).

SEC. 703. Funds appropriated by this Act shall be available for employment pursuant to the second sentence of section 706(a) of the Department of Agriculture Organic Act of 1944 (7 U.S.C. 2225) and 5 U.S.C. 3109.

SEC. 704. The Secretary of Agriculture may transfer unobligated balances of discretionary funds appropriated by this Act or other available unobligated discretionary balances of the Department of Agriculture to the Working Capital Fund for the acquisition of plant and capital equipment necessary for the delivery of financial, administrative, and information technology services of primary benefit to the agencies of the Department of Agriculture: Provided, That none of the funds made available by this Act or any other Act shall be transferred to the Working Capital Fund without the prior approval of the agency administrator: Provided further, That none of the funds transferred to the Working Capital Fund pursuant to this section shall be available for obligation without the prior approval of the Committees on Appropriations of both Houses of Congress.

SEC. 705. New obligational authority provided for the following appropriation items in this Act shall remain available until expended: Animal and Plant Health Inspection Service, the contingency fund to meet emergency conditions, information technology infrastructure, fruit fly program, emerging plant pests, boll weevil program, and up to 25 percent of the screwworm program; Food Safety and Inspection Service, field automation and information management project; Cooperative State Research, Education, and Extension Service, funds for competitive research grants (7 U.S.C. 450i(b)), funds for the Research, Education and Economics Information System (REEIS), and funds for the Native American Institutions Endowment Fund; Farm Service Agency, salaries and expenses funds made available to county committees; Foreign Agricultural Service, middle-income country training program and up to $2,000,000 of the Foreign Agricultural Service appropriation solely for the purpose of offsetting fluctuations in international currency exchange rates, subject to documentation by the Foreign Agricultural Service.

SEC. 706. No part of any appropriation contained in this Act shall remain available for obligation beyond the current fiscal year unless expressly so provided herein.

SEC. 707. Not to exceed $50,000 of the appropriations available to the Department of Agriculture in this Act shall be available to provide appropriate orientation and language training pursuant to section 606C of the Act of August 28, 1954 (7 U.S.C. 1766b).

SEC. 708. No funds appropriated by this Act may be used to pay negotiated indirect cost rates on cooperative agreements or similar arrangements between the United States Department of Agriculture and nonprofit institutions in excess of 10 percent of the total direct cost of the agreement when the purpose of such cooperative arrangements is to carry out programs of mutual interest between the two parties. This does not preclude appropriate payment of indirect costs on grants and contracts with such institutions when such indirect costs are computed on a similar basis for all agencies for which appropriations are provided in this Act.

SEC. 709. None of the funds in this Act shall be available to restrict the authority of the Commodity Credit Corporation to lease space for its own use or to lease space on behalf of other agencies of the Department of Agriculture when such space will be jointly occupied.

SEC. 710. None of the funds in this Act shall be available to pay indirect costs charged against competitive agricultural research, education, or extension grant awards issued by the Cooperative State Research, Education, and Extension Service that exceed 19 percent of total Federal funds provided under each award: Provided, That notwithstanding section 1462 of the National Agricultural Research, Extension, and Teaching Policy Act of 1977 (7 U.S.C. 3310), funds provided by this Act for grants awarded competitively by the Cooperative State Research, Education, and Extension Service shall be available to pay full allowable indirect costs for each grant awarded under section 9 of the Small Business Act (15 U.S.C. 638).

SEC. 711. Notwithstanding any other provision of this Act, all loan levels provided in this Act shall be considered estimates, not limitations.

SEC. 712. Appropriations to the Department of Agriculture for the cost of direct and guaranteed loans made available in the current fiscal year shall remain available until expended to cover obligations made in the current fiscal year for the following accounts: the Rural Development Loan Fund program account, the Rural Telephone Bank program account, the Rural Electrification and Telecommunications Loans program account, the Rural Housing Insurance Fund program account, and the Rural Economic Development Loans program account.

SEC. 713. None of the funds in this Act may be used to retire more than 5 percent of the Class A stock of the Rural Telephone Bank or to maintain any account or subaccount within the accounting records of the Rural Telephone Bank the creation of which has not specifically been authorized by statute: Provided, That notwithstanding any other provision of law, none of the funds appropriated or otherwise made available in this Act may be used to transfer to the Treasury or to the Federal Financing Bank any unobligated balance of the Rural Telephone Bank telephone liquidating account which is in excess of current requirements and such balance shall receive interest as set forth for financial accounts in section 505(c) of the Federal Credit Reform Act of 1990.

SEC. 714. Of the funds made available by this Act, not more than $1,800,000 shall be used to cover necessary expenses of activities related to all advisory committees, panels, commissions, and task forces of the Department of Agriculture, except for panels used to comply with negotiated rule makings and panels used to evaluate competitively awarded grants.

SEC. 715. None of the funds appropriated by this Act may be used to carry out section 410 of the Federal Meat Inspection Act (21 U.S.C. 679a) or section 30 of the Poultry Products Inspection Act (21 U.S.C. 471).

SEC. 716. No employee of the Department of Agriculture may be detailed or assigned from an agency or office funded by this Act to any other agency or office of the Department for more than 30 days unless the individual's employing agency or office is fully reimbursed by the receiving agency or office for the salary and expenses of the employee for the period of assignment.

SEC. 717. None of the funds appropriated or otherwise made available to the Department of

Agriculture shall be used to transmit or otherwise make available to any non-Department of Agriculture employee questions or responses to questions that are a result of information requested for the appropriations hearing process.

SEC. 718. None of the funds made available to the Department of Agriculture by this Act may be used to acquire new information technology systems or significant upgrades, as determined by the Office of the Chief Information Officer, without the approval of the Chief Information Officer and the concurrence of the Executive Information Technology Investment Review Board: Provided, That notwithstanding any other provision of law, none of the funds appropriated or otherwise made available by this Act may be transferred to the Office of the Chief Information Officer without the prior approval of the Committees on Appropriations of both Houses of Congress.

SEC. 719. (a) None of the funds provided by this Act, or provided by previous Appropriations Acts to the agencies funded by this Act that remain available for obligation or expenditure in the current fiscal year, or provided from any accounts in the Treasury of the United States derived by the collection of fees available to the agencies funded by this Act, shall be available for obligation or expenditure through a reprogramming of funds which: (1) creates new programs; (2) eliminates a program, project, or activity; (3) increases funds or personnel by any means for any project or activity for which funds have been denied or restricted; (4) relocates an office or employees; (5) reorganizes offices, programs, or activities; or (6) contracts out or privatizes any functions or activities presently performed by Federal employees; unless the Committees on Appropriations of both Houses of Congress are notified 15 days in advance of such reprogramming of funds.

(b) None of the funds provided by this Act, or provided by previous Appropriations Acts to the agencies funded by this Act that remain available for obligation or expenditure in the current fiscal year, or provided from any accounts in the Treasury of the United States derived by the collection of fees available to the agencies funded by this Act, shall be available for obligation or expenditure for activities, programs, or projects through a reprogramming of funds in excess of $500,000 or 10 percent, whichever is less, that: (1) augments existing programs, projects, or activities; (2) reduces by 10 percent funding for any existing program, project, or activity, or numbers of personnel by 10 percent as approved by Congress; or (3) results from any general savings from a reduction in personnel which would result in a change in existing programs, activities, or projects as approved by Congress; unless the Committees on Appropriations of both Houses of Congress are notified 15 days in advance of such reprogramming of funds.

(c) The Secretary of Agriculture, the Secretary of Health and Human Services, or the Chairman of the Commodity Futures Trading Commission shall notify the Committees on Appropriations of both Houses of Congress before implementing a program or activity not carried out during the previous fiscal year unless the program or activity is funded by this Act or specifically funded by any other Act.

SEC. 720. With the exception of funds needed to administer and conduct oversight of grants awarded and obligations incurred in prior fiscal years, none of the funds appropriated or otherwise made available by this or any other Act may be used to pay the salaries and expenses of personnel to carry out the provisions of section 401 of Public Law 105–185, the Initiative for Future Agriculture and Food Systems (7 U.S.C. 7621).

SEC. 721. None of the funds made available to the Food and Drug Administration by this Act shall be used to reduce the Detroit, Michigan, Food and Drug Administration District Office below the operating and full-time equivalent staffing level of July 31, 1999; or to change the Detroit District Office to a station, residence post or similarly modified office; or to reassign residence posts assigned to the Detroit District Office: Provided, That this section shall not apply to Food and Drug Administration field laboratory facilities or operations currently located in Detroit, Michigan, except that field laboratory personnel shall be assigned to locations in the general vicinity of Detroit, Michigan, pursuant to cooperative agreements between the Food and Drug Administration and other laboratory facilities associated with the State of Michigan.

SEC. 722. None of the funds appropriated by this Act or any other Act shall be used to pay the salaries and expenses of personnel who prepare or submit appropriations language as part of the President's Budget submission to the Congress of the United States for programs under the jurisdiction of the Appropriations Subcommittees on Agriculture, Rural Development, Food and Drug Administration, and Related Agencies that assumes revenues or reflects a reduction from the previous year due to user fees proposals that have not been enacted into law prior to the submission of the Budget unless such Budget submission identifies which additional spending reductions should occur in the event the user fees proposals are not enacted prior to the date of the convening of a committee of conference for the fiscal year 2005 appropriations Act.

SEC. 723. None of the funds made available by this Act or any other Act may be used to close or relocate a State Rural Development office unless or until cost effectiveness and enhancement of program delivery have been determined.

SEC. 724. Of any shipments of commodities made pursuant to section 416(b) of the Agricultural Act of 1949 (7 U.S.C. 1431(b)), the Secretary of Agriculture shall, to the extent practicable, direct that tonnage equal in value to not more than $25,000,000 shall be made available to foreign countries to assist in mitigating the effects of the Human Immunodeficiency Virus and Acquired Immune Deficiency Syndrome on communities, including the provision of—

(1) agricultural commodities to—

(A) individuals with Human Immunodeficiency Virus or Acquired Immune Deficiency Syndrome in the communities; and

(B) households in the communities, particularly individuals caring for orphaned children; and

(2) agricultural commodities monetized to provide other assistance (including assistance under microcredit and microenterprise programs) to create or restore sustainable livelihoods among individuals in the communities, particularly individuals caring for orphaned children.

SEC. 725. In addition to amounts otherwise appropriated or made available by this Act, $2,981,000 is appropriated for the purpose of providing Bill Emerson and Mickey Leland Hunger Fellowships through the Congressional Hunger Center.

SEC. 726. Notwithstanding section 412 of the Agricultural Trade Development and Assistance Act of 1954 (7 U.S.C. 1736f), any balances available to carry out title III of such Act as of the date of enactment of this Act, and any recoveries and reimbursements that become available to carry out title III of such Act, may be used to carry out title II of such Act.

SEC. 727. Section 375(e)(6)(B) of the Consolidated Farm and Rural Development Act (7 U.S.C. 2008j(e)(6)(B)) is amended by striking ''$26,499,000'' and inserting ''$26,998,000''.

SEC. 728. None of the funds made available in this Act may be transferred to any department, agency, or instrumentality of the United States Government, except pursuant to a transfer made by, or transfer authority provided in, this Act or any other appropriation Act.

SEC. 729. None of the funds made available to the Food and Drug Administration by this Act shall be used to close or relocate, or to plan to close or relocate, the Food and Drug Administration Division of Pharmaceutical Analysis in St. Louis, Missouri, outside the city or county limits of St. Louis, Missouri.

SEC. 730. Notwithstanding any other provision of law, of the funds made available in this Act for competitive research grants (7 U.S.C. 450i(b)), the Secretary may use up to 20 percent of the amount provided to carry out a competitive grants program under the same terms and conditions as those provided in section 401 of the Agricultural Research, Extension, and Education Reform Act of 1998 (7 U.S.C. 7621), including requests for proposals for grants for critical emerging issues described in section 401(c)(1) of that Act for which the Secretary has not issued requests for proposals for grants in fiscal year 2002 or 2003.

SEC. 731. Notwithstanding any other provision of law, the Natural Resources Conservation Service shall provide financial and technical assistance through the Watershed and Flood Prevention Operations program to carry out the Upper Tygart Valley Watershed project, West Virginia: Provided, That the Natural Resources Conservation Service is authorized to provide 100 percent of the engineering assistance and 75 percent cost share for installation of the water supply component of this project.

SEC. 732. Agencies and offices of the Department of Agriculture may utilize any unobligated salaries and expenses funds to reimburse the Office of the General Counsel for salaries and expenses of personnel, and for other related expenses, incurred in representing such agencies and offices in the resolution of complaints by employees or applicants for employment, and in cases and other matters pending before the Equal Employment Opportunity Commission, the Federal Labor Relations Authority, or the Merit Systems Protection Board with the prior approval of the Committees on Appropriations of both Houses of Congress.

SEC. 733. None of the funds appropriated or made available by this Act or any other Act may be used to pay the salaries and expenses of personnel to carry out section 14(h)(1) of the Watershed Protection and Flood Prevention Act (16 U.S.C. 1012(h)(1)).

SEC. 734. None of the funds appropriated or made available by this Act, or any other Act, may be used to pay the salaries and expenses of personnel to carry out subtitle I of the Consolidated Farm and Rural Development Act (7 U.S.C. 2009dd through dd–7).

SEC. 735. None of the funds appropriated or made available by this Act or any other Act may be used to pay the salaries and expenses of personnel to carry out section 6405 of Public Law 107–171 (7 U.S.C. 2655).

SEC. 736. Notwithstanding any other provision of law, the Natural Resources Conservation Service may provide financial and technical assistance through the Watershed and Flood Prevention Operations program for the Kuhn Bayou and Ditch 26 Improvement projects in Arkansas, the Matanuska River erosion control project in Alaska, the DuPage County Sawmill Creek Watershed project in Illinois, and the Coal Creek project in Utah, and four flood control structures in Marmaton, Kansas.

SEC. 737. None of the funds made available in fiscal year 2004 or preceding fiscal years for programs authorized under the Agricultural Trade Development and Assistance Act of 1954 (7 U.S.C. 1691 et seq.) in excess of $20,000,000 shall be used to reimburse the Commodity Credit Corporation for the release of eligible commodities under section 302(f)(2)(A) of the Bill Emerson Humanitarian Trust Act (7 U.S.C. 1736f–1): Provided, That any such funds made available to reimburse the Commodity Credit Corporation shall only be used pursuant to section 302(b)(2)(B)(i) of the Bill Emerson Humanitarian Trust Act.

SEC. 738. Notwithstanding any other provision of law, the Natural Resources Conservation

Service may provide from appropriated funds financial and technical assistance to the Dry Creek project, Utah.

SEC. 739. The Secretary of Agriculture is authorized to permit employees of the United States Department of Agriculture to carry and use firearms for personal protection while conducting field work in remote locations in the performance of their official duties.

SEC. 740. None of the funds appropriated or otherwise made available by this Act shall be used to pay the salaries and expenses of personnel to carry out the provisions of sections 7404(a)(1) and 7404(c)(1) of Public Law 107–171.

SEC. 741. Of the funds made available under section 27(a) of the Food Stamp Act of 1977 (7 U.S.C. 2011 et seq.), the Secretary may use up to $10,000,000 for costs associated with the distribution of commodities.

SEC. 742. None of the funds appropriated or otherwise made available by this Act or any other Act shall be used to pay the salaries and expenses of personnel to enroll in excess of 189,144 acres in the calendar year 2004 wetlands reserve program as authorized by 16 U.S.C. 3837.

SEC. 743. (a) Notwithstanding subsections (c) and (e)(2) of section 313A of the Rural Electrification Act (7 U.S.C. 940c(c) and (e)(2)) in implementing section 313A of that Act, the Secretary shall, with the consent of the lender, structure the schedule for payment of the annual fee, not to exceed an average of 30 basis points per year for the term of the loan, to ensure that sufficient funds are available to pay the subsidy costs for note guarantees under that section; and

(b) The Secretary shall publish a proposed rule to carry out section 313A of the Rural Electrification Act of 1936 within 60 days of enactment of this Act.

SEC. 744. None of the funds appropriated or otherwise made available by this Act or any other Act shall be used to pay the salaries and expenses of personnel to carry out a ground and surface water conservation program authorized by section 2301 of Public Law 107–171, the Farm Security and Rural Investment Act of 2002, in excess of $51,000,000.

SEC. 745. None of the funds appropriated or otherwise made available by this Act or any other Act shall be used to pay the salaries and expenses of personnel to carry out section 2502 of Public Law 107–171, the Farm Security and Rural Investment Act of 2002, in excess of $42,000,000.

SEC. 746. None of the funds appropriated or otherwise made available by this Act or any other Act shall be used to pay the salaries and expenses of personnel to carry out section 2503 of Public Law 107–171, the Farm Security and Rural Investment Act of 2002, in excess of $112,044,000.

SEC. 747. There is hereby appropriated $3,000,000 to carry out section 6028 of Public Law 107–171, the Farm Security and Rural Investment Act of 2002: Provided, That notwithstanding section 383B(g)(1) of the Consolidated Farm and Rural Development Act (7 U.S.C. 2009bb–1(g)(1)), the Federal share of the administrative expenses of the Northern Great Plains Regional Authority for fiscal year 2004 shall be 100 percent.

SEC. 748. None of the funds appropriated or made available by this Act or any other Act may be used to pay the salaries and expenses of personnel to carry out section 6029 of Public Law 107–171, the Farm Security and Rural Investment Act of 2002: Provided, That this section shall not apply to activities related to the promulgation of regulations or the receipt and review of applications for the Rural Business Investment Program.

SEC. 749. ACCESS TO BROADBAND TELECOMMUNICATIONS SERVICES IN RURAL AREAS. None of the funds appropriated or otherwise made available by this or any other Act shall be used to pay the salaries and expenses of personnel to expend the $20,000,000 made available by section 601(j)(1)(A) of the Rural Electrification Act of 1936 (7 U.S.C. 950bb(j)(1)(A)) for fiscal year 2004.

SEC. 750. None of the funds appropriated or otherwise made available by this Act or any other Act shall be used to pay the salaries and expenses of personnel to carry out section 9006 of Public Law 107–171, the Farm Security and Rural Investment Act of 2002.

SEC. 751. Agencies and offices of the Department of Agriculture may utilize any available discretionary funds to cover the costs of preparing, or contracting for the preparation of, final agency decisions regarding complaints of discrimination in employment or program activities arising within such agencies and offices.

SEC. 752. Notwithstanding any other provision of law, for any fiscal year, in the case of a high cost isolated rural area that is not connected to a road system in Alaska, the maximum level for the single family housing assistance shall be 150 percent of the average income level in the metropolitan areas of the State and 115 percent of all other eligible areas of the State.

SEC. 753. Any unobligated balances in the Alternative Agricultural Research and Commercialization Revolving Fund are hereby rescinded.

SEC. 754. There is hereby appropriated $2,000,000, to remain available until expended, for the Denali Commission to address deficiencies in solid waste disposal sites which threaten to contaminate rural drinking water supplies.

SEC. 755. Notwithstanding any other provision of law, the Secretary shall consider the City of Vicksburg, Mississippi; the City of Aberdeen, South Dakota; and the City of Starkville, Mississippi as meeting the requirements of a rural area contained in section 520 of the Housing Act of 1949 (42 U.S.C. 1490) until receipt of the decennial Census for the year 2010.

SEC. 756. Notwithstanding any other provision of law, the Secretary shall consider the City of Berlin, New Hampshire; the City of Guymon, Oklahoma; the City of Shawnee, Oklahoma; and the City of Altus, Oklahoma, to be eligible for loans and grants provided through the Rural Community Advancement Program until receipt of the decennial Census in the year 2010.

SEC. 757. None of the funds made available in this Act or any other Act may be used to study or enter into a contract with a private party to carry out, without specific authorization in a subsequent Act of Congress, a competitive sourcing activity of the Secretary of Agriculture, including support personnel of the Department of Agriculture, relating to rural development or farm loan programs, animal disease research, or grant review or management activities.

SEC. 758. Section 501(b)(5)(B) of the Housing Act of 1949 (42 U.S.C. 1471(b)(5)(B) is amended by striking ''for fiscal years 2002 and 2003,''.

SEC. 759. AGRICULTURAL MANAGEMENT ASSISTANCE. Section 524(b)(4)(B) of the Federal Crop Insurance Act (7 U.S.C. 1542(b)(4)(B)) is amended—

(1) in clause (i), by striking ''clause (ii)'' and inserting ''clauses (ii) and (iii)''; and

(2) by adding at the end the following:

''(iii) CERTAIN USES.—Of the amounts made available to carry out this subsection for each fiscal year, the Commodity Credit Corporation shall use not less than—

''(I) $15,000,000 to carry out subparagraphs (A), (B), and (C) of paragraph (2) through the Natural Resources Conservation Service; and

''(II) $2,000,000 to provide organic certification cost share assistance through the Agricultural Marketing Service.''.

SEC. 760. TRAVEL RELATING TO COMMERCIAL SALES OF AGRICULTURAL AND MEDICAL GOODS. Section 910(a) of the Trade Sanctions Reform And Export Enhancement Act of 2000 (22 U.S.C. 7209(a)) is amended to read as follows:

''(a) AUTHORIZATION OF TRAVEL RELATING TO COMMERCIAL SALES OF AGRICULTURAL AND MEDICAL GOODS.—The Secretary of the Treasury shall promulgate regulations under which the travel-related transactions listed in paragraph (c) of section 515.560 of title 31, Code of Federal Regulations, are authorized by general license for travel to, from, or within Cuba for the purpose of conferring, exhibiting, marketing, planning, sales negotiation, delivery, expediting, facilitating, or servicing commercial export sale of agricultural and medical goods pursuant to the provisions of this title.''.

SEC. 761. PROTECTION OF DOWNED ANIMALS. None of the funds appropriated or otherwise made available by this Act to pay the salaries or expenses of employees or agents of the Department of Agriculture may be used to approve for human consumption under the Federal Meat Inspection Act (21 U.S.C. 601 et seq.) any cattle, sheep, swine, goats, horses, mules, or other equines that are unable to stand or walk unassisted at an establishment subject to inspection at the point of examination and inspection, as required by section 3(a) of that Act (21 U.S.C. 603(a)).

SEC. 762. PROHIBITION OF ENERGY MARKET MANIPULATION. (a) PROHIBITION.—Part II of the Federal Power Act (16 U.S.C. 824 et seq.) is amended by adding at the end the following:

''SEC. 215. PROHIBITION OF MARKET MANIPULATION.

''It shall be unlawful for any person, directly or indirectly, to use or employ, in connection with the purchase or sale of electric energy or the purchase or sale of transmission services subject to the jurisdiction of the Commission, any manipulative or deceptive device or contrivance in contravention of such regulations as the Commission may promulgate as appropriate in the public interest or for the protection of electric ratepayers.''.

(b) RATES RESULTING FROM MARKET MANIPULATION.—Section 205(a) of the Federal Power Act (16 U.S.C. 824d(a)) is amended by inserting after ''not just and reasonable'' the following: ''or that result from a manipulative or deceptive device or contrivance''.

SEC. 763. Hereafter, no funds provided in this or any other Act shall be available to the Secretary of Agriculture acting through the Foreign Agricultural Service to promote the sale or export of tobacco or tobacco products.

SEC. 764. IN GENERAL.—Section 3(o)(4) of the Food Stamp Act of 1977, as amended (7 U.S.C. 2012(o)(4), is amended by inserting before the period at the end the following: '', and except that on October 1, 2003, in the case of households residing in Alaska and Hawaii the Secretary may not reduce the cost of such diet in effect on September 30, 2002''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall be effective beginning on September 30, 2003.

SEC. 765. MODIFICATION OF BOUNDARIES OF AROOSTOOK COUNTY AND GRIGGS-STEELE EMPOWERMENT ZONES. (a) AROOSTOOK COUNTY EMPOWERMENT ZONE.—Notwithstanding any other provision of law, the Aroostook County empowerment zone shall include for the period such empowerment zone remains designated, in addition to the area designated as of the date of the enactment of this Act, the remaining area of the county not included in such designation.

(b) GRIGGS-STEELE EMPOWERMENT ZONE.—Notwithstanding any other provision of law, the Griggs-Steele empowerment zone shall include for the period such empowerment zone remains designated, in addition to the area designated as of the date of the enactment of this Act, the remaining area of Griggs County not included in such designation.

SEC. 766. COST-SHARING FOR ANIMAL AND PLANT HEALTH EMERGENCY PROGRAMS. None of the funds made available by this Act may be used to issue a final rule in furtherance of, or otherwise implement, the proposed rule on cost-sharing for animal and plant health emergency programs of the Animal and Plant Health Inspection Service published on July 8, 2003 (Docket No. 02–062–1; 68 Fed. Reg. 40541).

SEC. 767. Section 601(b)(2) of the Rural Electrification Act of 1936 (7 U.S.C. 950bb(b)(2)) is amended to read as follows:

''(2) ELIGIBLE RURAL COMMUNITY.—The term 'eligible rural community' means any area of the United States that is not contained in an incorporated city or town with a population in excess of 20,000 inhabitants.''.

SEC. 768. Notwithstanding any other provision of law, for all activities under programs of the Rural Development Mission Area within the County of Honolulu, Hawaii, the Secretary may designate any portion of the county as a rural area or eligible rural community that the Secretary determines is not urban in character.

SEC. 769. The first sentence of section 306(g)(1) of the National Housing Act (12 U.S.C. 1721(g)(1)) is amended—

(1) by striking ''or title V of the Housing Act of 1949''; and

(2) by inserting after ''1944'' the following: '', title V of the Housing Act of 1949,''.

SEC. 770. Notwithstanding the provisions of the Consolidated Farm and Rural Development Act (including the associated regulations) governing the Community Facilities Program, the Secretary shall allow all Community Facility Program facility borrowers and grantees to enter into contracts with not-for-profit third parties for services consistent with the requirements of the Program, grant, and/or loan: Provided, That the contracts protect the interests of the Government regarding cost, liability, maintenance, and administrative fees.

SEC. 771. EQIP PAYMENT LIMIT. None of the funds made available under this Act or any other Act shall be used to pay the salaries and expenses of personnel to carry out chapter 4 of subtitle D of the Food Security Act of 1985 (16 U.S.C. 3839aa et seq.) to make payments to an individual, entity, or agricultural operation, directly or indirectly, in excess of an aggregate of $300,000 for all contracts entered into by the individual, entity, or agricultural operation during the period of fiscal years 2002 through 2007.

SEC. 772. Notwithstanding any other provision of law, the Secretary of Agriculture may use appropriations available to the Secretary for activities authorized under sections 426–426c of title 7, United States Code, under this or any other Act, to enter into cooperative agreements, with a State, political subdivision, or agency thereof, a public or private agency, organization, or any other person, to lease aircraft if the Secretary determines that the objectives of the agreement will: (1) serve a mutual interest of the parties to the agreement in carrying out the programs administered by the Animal Plant Health Inspection Service, Wildlife Service; and (2) all parties will contribute resources to the accomplishment of these objectives; award of a cooperative agreement authorized by the Secretary may be made for an initial term not to exceed 5 years.

SEC. 773. CITRUS CANKER ASSISTANCE. Section 211 of the Agricultural Assistance Act of 2003 (117 Stat. 545) is amended—

(1) in the section heading, by inserting ''***tree replacement and***'' after ''***for***''; and

(2) in subsection (a), by inserting ''tree replacement and'' after ''Florida for''.

SEC. 774. RURAL ELECTRIFICATION. For fiscal year 2004, the Secretary of Agriculture may use any unobligated carryover funds made available for any program administered by the Rural Utilities Service (not including funds made available under the heading ''RURAL COMMUNITY ADVANCEMENT PROGRAM'' in any Act of appropriation) to carry out section 315 of the Rural Electrification Act of 1936 (7 U.S.C. 940e).

SEC. 775. The Commissioner of the Food and Drug Administration shall provide no less than $250,000, from within funds appropriated or otherwise made available in this Act for the Food and Drug Administration, to process comments submitted in response to Docket No. 95N–0304 published in the Federal Register on March 5, 2003 (68FR 10417): Provided further, That the Commissioner should expedite and complete review of available scientific evidence of ephedra's pharmacology and mechanism of action.

SEC. 776. WORKLOAD ANALYSIS OF FARM SERVICE AGENCY. None of the funds made available by this Act may be used to pay more than ½ of the salary of the Under Secretary for Farm and Foreign Agricultural Services after January 31, 2004, unless and until the Secretary of Agriculture provides to the Committee on Agriculture of House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate a workload analysis of employees of the Farm Service Agency for each of fiscal years 2001, 2002, and 2003 (including an analysis of the number of workload items and required man-years, by State).

SEC. 777. SUN GRANT RESEARCH INITIATIVE. (a) SHORT TITLE.—This section may be cited as the ''Sun Grant Research Initiative Act of 2003''.

(b) RESEARCH, EXTENSION, AND EDUCATIONAL PROGRAMS ON BIOBASED ENERGY TECHNOLOGIES AND PRODUCTS.—Title IX of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 8101 et seq.) is amended by adding at the end the following:

''SEC. 9011. RESEARCH, EXTENSION, AND EDUCATIONAL PROGRAMS ON BIOBASED ENERGY TECHNOLOGIES AND PRODUCTS.

''(a) PURPOSES.—The purposes of the programs established under this section are—

''(1) to enhance national energy security through the development, distribution, and implementation of biobased energy technologies;

''(2) to promote diversification in, and the environmental sustainability of, agricultural production in the United States through biobased energy and product technologies;

''(3) to promote economic diversification in rural areas of the United States through biobased energy and product technologies; and

''(4) to enhance the efficiency of bioenergy and biomass research and development programs through improved coordination and collaboration between the Department of Agriculture, the Department of Energy, and the land-grant colleges and universities.

''(b) DEFINITIONS.—In this section:

''(1) LAND-GRANT COLLEGES AND UNIVERSITIES.—The term 'land-grant colleges and universities' means—

''(A) 1862 Institutions (as defined in section 2 of the Agricultural Research, Extension, and Education Reform Act of 1998 (7 U.S.C. 7601));

''(B) 1890 Institutions (as defined in section 2 of that Act) and West Virginia State College; and

''(C) 1994 Institutions (as defined in section 2 of that Act).

''(2) SECRETARY.—The term 'Secretary' means the Secretary of Agriculture.

''(c) ESTABLISHMENT.—To carry out the purposes described in subsection (a), the Secretary shall establish programs under which—

''(1) the Secretary shall provide grants to sun grant centers specified in subsection (d); and

''(2) the sun grant centers shall use the grants in accordance with this section.

''(d) GRANTS TO CENTERS.—The Secretary shall use amounts made available for a fiscal year under subsection (j) to provide a grants in equal amounts to each of the following sun grant centers:

''(1) NORTH-CENTRAL CENTER.—A north-central sun grant center at South Dakota State University for the region composed of the States of Illinois, Indiana, Iowa, Minnesota, Montana, Nebraska, North Dakota, South Dakota, Wisconsin, and Wyoming.

''(2) SOUTHEASTERN CENTER.—A southeastern sun grant center at the University of Tennessee at Knoxville for the region composed of—

''(A) the States of Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee, and Virginia;

''(B) the Commonwealth of Puerto Rico; and

''(C) the United States Virgin Islands.

''(3) SOUTH-CENTRAL CENTER.—A south-central sun grant center at Oklahoma State University for the region composed of the States of Arkansas, Colorado, Kansas, Louisiana, Missouri, New Mexico, Oklahoma, and Texas.

''(4) WESTERN CENTER.—A western sun grant center at Oregon State University for the region composed of—

''(A) the States of Alaska, Arizona, California, Hawaii, Idaho, Nevada, Oregon, Utah, and Washington; and

''(B) territories and possessions of the United States (other than the territories referred to in subparagraphs (B) and (C) of paragraph (2)).

''(5) NORTHEASTERN CENTER.—A northeastern sun grant center at Cornell University for the region composed of the States of Connecticut, Delaware, Massachusetts, Maryland, Maine, Michigan, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, Vermont, and West Virginia.

''(e) USE OF FUNDS.—

''(1) CENTERS OF EXCELLENCE.—Of the amount of funds that are made available for a fiscal year to a sun grant center under subsection (d), the center shall use not more than 25 percent of the amount for administration to support excellence in science, engineering, and economics at the center to promote the purposes described in subsection (a) through the State agricultural experiment station, cooperative extension services, and relevant educational programs of the university.

''(2) GRANTS TO LAND-GRANT COLLEGES AND UNIVERSITIES.—

''(A) IN GENERAL.—The sun grant center established for a region shall use the funds that remain available for a fiscal year after expenditures made under paragraph (1) to provide competitive grants to land-grant colleges and universities in the region of the sun grant center to conduct, consistent with the purposes described in subsection (a), multiinstitutional and multistate—

''(i) research, extension, and educational programs on technology development; and

''(ii) integrated research, extension, and educational programs on technology implementation.

''(B) PROGRAMS.—Of the amount of funds that are used to provide grants for a fiscal year under subparagraph (A), the center shall use—

''(i) not less than 30 percent of the funds to carry out programs described in subparagraph (A)(i); and

''(ii) not less than 30 percent of the funds to carry out programs described in subparagraph (A)(ii).

''(3) INDIRECT COSTS.—A sun grant center may not recover the indirect costs of making grants under paragraph (2) to other land-grant colleges and universities.

''(f) PLAN.—

''(1) IN GENERAL.—Subject to the availability of funds under subsection (j), in cooperation with other land-grant colleges and universities and private industry in accordance with paragraph (2), the sun grant centers shall jointly develop and submit to the Secretary, for approval, a plan for addressing at the State and regional levels the bioenergy, biomass, and gasification research priorities of the Department of Agriculture and the Department of Energy for the making of grants under paragraphs (1) and (2) of subsection (e).

''(2) GASIFICATION COORDINATION.—

''(A) IN GENERAL.—In developing the plan under paragraph (1) with respect to gasification research, the sun grant centers identified in paragraphs (1) and (2) of subsection (d) shall coordinate with land grant colleges and universities in their respective regions that have ongoing research activities with respect to the research.

''(B) FUNDING.—Funds made available under subsection (d) to the sun grant center identified in subsection (e)(2) shall be available to carry out planning coordination under paragraph (1) of this subsection.

''(g) GRANTS TO OTHER LAND-GRANT COLLEGES AND UNIVERSITIES.—

''(1) PRIORITY FOR GRANTS.—In making grants under subsection (e)(2), a sun grant center shall give a higher priority to programs that are consistent with the plan approved by the Secretary under subsection (f).

''(2) TERM OF GRANTS.—The term of a grant provided by a sun grant center under subsection (e)(2) shall not exceed 5 years.

''(h) GRANT INFORMATION ANALYSIS CENTER.—The sun grant centers shall maintain a Sun Grant Information Analysis Center at the sun grant center specified in subsection (d)(1) to provide sun grant centers analysis and data management support.

''(i) ANNUAL REPORTS.—Not later than 90 days after the end of a year for which a sun grant center receives a grant under subsection (d), the sun grant center shall submit to the Secretary a report that describes the policies, priorities, and operations of the program carried out by the center during the year, including a description of progress made in facilitating the priorities described in subsection (f).

''(j) AUTHORIZATION OF APPROPRIATIONS.—

''(1) IN GENERAL.—There are authorized to be appropriated to carry out this section—

''(A) $25,000,000 for fiscal year 2005;

''(B) $50,000,000 for fiscal year 2006; and

''(C) $75,000,000 for each of fiscal years 2007 through 2010.

''(2) GRANT INFORMATION ANALYSIS CENTER.—Of amounts made available under paragraph (1), not more than $4,000,000 for each fiscal year shall be made available to carry out subsection (h).''.

SEC. 778. DIETARY SUPPLEMENTS. The Commissioner of Food and Drugs shall provide not less than $11,400,000 from within funds appropriated or otherwise made available by this Act for regulation by the Food and Drug Administration of dietary supplements.

SEC. 779. SENSE OF SENATE ON IMPORTATION OF CATTLE WITH BOVINE SPONGIFORM ENCEPHALOPATHY. (a) FINDINGS.—The Senate finds that—

(1) the United States beef industry is the single largest segment of United States agriculture;

(2) the United States has never allowed the importation of live cattle from a country that has been found to have bovine spongiform encephalopathy (referred to in this section as ''BSE'');

(3) the importation of live cattle known to have BSE could put the entire United States cattle industry at unnecessary risk;

(4) food safety is a top priority for the people of the United States; and

(5) the importation of beef and beef products from a country known to have BSE could undermine consumer confidence in the integrity of the food supply and present a possible danger to human health.

(b) SENSE OF SENATE.—It is the sense of the Senate that the Secretary of Agriculture—

(1) should not allow the importation of live cattle from any country known to have BSE unless the country complies with the animal health guidelines established by the World Organization for Animal Health; and

(2) should abide by international standards for the continued health and safety of the United States livestock industry.

SEC. 780. REDUCTION IN TRAVEL AMOUNTS. (a) IN GENERAL.—Notwithstanding any other provision of this Act, each amount provided by this Act for travel expenses is reduced by the pro rata percentage required to reduce the total amount provided by this Act for such expenses by $6,000,000.

(b) REPORT.—Not later than 30 days after the date of enactment of this Act, the Director of the Office of Management and Budget shall submit to the Committees on Appropriations of the House of Representatives and the Senate a listing of the amounts by account of the reductions made pursuant to subsection (a).

SEC. 781. LIMITATION ON ALLOCATION OF PURCHASE PRICES FOR BUTTER AND NONFAT DRY MILK. None of the funds made available by this Act may be used to pay the salaries or expenses of employees of the Department of Agriculture to allocate the rate of price support between the purchase prices for nonfat dry milk and butter in a manner does not support the price of milk in accordance with section 1501(b) of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 7981(b)).

SEC. 782. SENSE OF SENATE REGARDING COUNTRY OF ORIGIN LABELING REQUIREMENTS. It is the sense of the Senate that the conferees on the part of the Senate on this bill shall insist that no limits on the use of funds to enforce country of origin labeling requirements for meat or meat products be included in the conference report accompanying the bill.

SEC. 783. EMERGENCY WATERSHED PROTECTION PROGRAM. Notwithstanding any other provision of law, the Secretary of Agriculture is authorized hereafter to make funding and other assistance available through the emergency watershed protection program under section 403 of the Agricultural Credit Act of 1978 (16 U.S.C. 2203) to repair and prevent damage to non-Federal land in watersheds that have been impaired by fires initiated by the Federal Government and to waive cost sharing requirements for the funding and assistance.

SEC. 784. The Secretary may waive the requirements regarding small and emerging rural business as authorized under the Rural Business Enterprise Grant program for the purpose of a lease for the Oakridge Oregon Industrial Park.

SEC. 785. WATER AND WASTE DISPOSAL GRANT TO THE ALASKA DEPARTMENT OF COMMUNITY AND ECONOMIC DEVELOPMENT. Notwithstanding any other provision of law—

(1) the Alaska Department of Community and Economic Development may be eligible to receive a water and waste disposal grant under section 306(a) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1926(a)) in an amount that is up to 75 percent of the total cost of providing water and sewer service to the proposed hospital in the Matanuska-Susitna Borough, Alaska; and

(2) the Alaska Department of Community and Economic Development may be allowed to pass the grant funds through to the local government entity that will provide water and sewer service to the hospital.

SEC. 786. CONSERVATION RESERVE PROGRAM. Land shall be considered eligible land under section 1231(b) of the Food Security Act of 1985 (16 U.S.C. 3831(b)) for purposes of enrollment into the conservation reserve program established under subchapter B of chapter 1 of subtitle D of title XII of the Food Security Act of 1985 (16 U.S.C. 3831 et seq.) if the land—

(1) is planted to hardwood trees as of the date of enactment of this Act; and

(2) was enrolled in the conservation reserve program under a contract that expired before the date of enactment of this Act.

SEC. 787. PROHIBITION OF USE OF FUNDS TO PURCHASE CHICKEN TREATED WITH FLUOROQUINOLONE. After December 31, 2003, none of the funds made available by this Act may be used to purchase chickens or the products of chickens for use in any program under the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.) or the Richard B. Russell National School Lunch Act (42 U.S.C. 1751 et seq.), unless the supplier provides certification that the supplier does not feed or administer fluoroquinolone to chickens produced by the supplier.

SEC. 788. RENEWABLE ENERGY SYSTEM LOAN GUARANTEES. Title IX of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 8101 et seq.) is amended by adding the following new section:

''SEC. 9011. RENEWABLE ENERGY SYSTEM LOAN GUARANTEES.

''(a) DEFINITION OF SUBSIDY COSTS.—In this section, the term 'subsidy costs' has the meaning given the term 'cost' in section 502 of the Federal Credit Reform Act of 1990 (2 U.S.C. 661a).

''(b) PROJECTS.—Section 9006(c)(1) shall not apply to a loan guarantee made under this subsection to carry out a project if—

''(1) the loan will be used—

''(A) to purchase a renewable energy system that has, as one of its principal purposes, the commercial production of an agricultural commodity; and

''(B) to promote a solution to an environmental problem in a rural area of the State in which the project will be carried out;

''(2) the lender of the loan exercises due diligence with respect to the borrower of the loan;

''(3) the borrower of the loan pays in full, before the guarantee is issued, a guarantee fee in the amount of the estimated subsidy cost of the guarantee, as determined by the Director of the Office of Management and Budget;

''(4) except as provided in paragraph (5), the principal amount of the loan is not more than $25,000,000;

''(5) the principal amount of the loan is more than $25,000,000, but is not more than $75,000,000, if the Secretary—

''(A) approves the loan application; and

''(B) does not delegate the authority described in subparagraph (A);

''(6) the project requires no Federal or State financial assistance, other than the loan guarantee provided under this subsection; and

''(7) the project complies with all necessary permits, licenses, and approvals required under the laws of the State.

''(c) COST SHARING.—

''(1) IN GENERAL.—The amount of a loan guarantee under this section for a project described in subsection (b) shall not exceed 80 percent of the total project cost.

''(2) SUBORDINATION.—Any financing for the non-Federal share of the total project cost shall be subordinated to the federally guaranteed portion of the total project cost.

''(d) LOAN GUARANTEE LIMITS.—The loan guarantee limitations applicable to the business and industry guarantee loan program authorized under section 310B of the Consolidated Farm and Rural Development Act (7 U.S.C. 1932) shall apply to loan guarantees made under this section.

''(e) MAXIMUM AMOUNT.—

''(1) INDIVIDUAL LOANS.—The amount of principal for a loan under this section for a project described in subsection (b) shall not exceed $75,000,000.

''(2) ALL LOANS.—The total outstanding amount of principal for loans under this section for all projects described in subsection (b) shall not exceed $500,000,000.

''(f) PROPOSED RULE.—The Secretary shall publish a proposed rule to carry out this section within 120 days of enactment of this Act.''.

SEC. 789. WATER AND WASTE DISPOSAL GRANT TO THE CITY OF POSTVILLE, IOWA. Notwithstanding any other provision of law, the city of Postville, Iowa, shall be eligible to receive a water and waste disposal grant under section 306(a) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1926(a)) in an amount that is equal to not more than 75 percent of the total cost of providing water and sewer service in the city.

SEC. 790. TEXAS RICE SAFEGUARD INITIATIVE. (a) IN GENERAL.—In order to provide a safeguard against the further decline of the rice industry and wildlife habitat in Texas, and to provide information to the Congress in anticipation of and preparation for the 2007 farm bill, the Secretary of Agriculture shall conduct the initiative required under this section.

(b) ADMINISTRATIVE IMPROVEMENTS.—As an integral part of the safeguard initiative the Secretary of Agriculture shall review the administration and enhance the enforcement of section 1105(a)(1)(E) of Public Law 107–171 as it relates to and is applied to the control of noxious weeds and the proper application and implementation

of the conserving use requirements on rice base acreage in Texas.

(c) REPORTS TO CONGRESS.—The Secretary shall review and evaluate the costs, benefits and effects of the safeguard initiative on rice producers, including tenant rice producers, the rice milling and processing industry, wildlife habitat, and the economies of rice farming areas in Texas, detailed by each of these affected interests and by the program variables involved in the safeguard initiative under subsection (b), including whether or not producers on a farm have qualified plantings. The Secretary shall provide to the Committee on Agriculture, Nutrition, and Forestry of the Senate and the Committee on Agriculture of the House of Representatives an annual report detailing the progress and findings of the initiative not later than February 1 of each of the years 2005 through 2007.

This Act may be cited as the ''Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2004''.

ARMING OF CARGO PILOTS

Mr. FRIST. I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 293, S. 1657.

The PRESIDING OFFICER. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (S. 1657) to amend section 44921 of title 49, United States Code, to provide for the arming of cargo pilots against terrorism.

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

Mr. FRIST. Madam President, I ask unanimous consent the bill be read the third time and passed, the motion to reconsider be laid upon the table, and any statements be printed in the RECORD.

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

The bill (S. 1657) was read the third time and passed, as follows:

The bill (S. 1657) to amend section 44921 of title 49, United States Code, to provide for the arming of cargo pilots against terrorism, was considered, ordered to be engrossed for a third reading, read the third time, and passed; as follows:

S. 1657

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

SECTION 1. ARMING CARGO PILOTS AGAINST TERRORISM.

(a) SENSE OF CONGRESS.—It is the sense of Congress that members of a flight deck crew of a cargo aircraft should be armed with a firearm and taser to defend the cargo aircraft against an attack by terrorists that could result in the use of the aircraft as a weapon of mass destruction or for other terrorist purposes.

(b) ARMING CARGO PILOTS AGAINST TERRORISM.—Section 44921 of title 49, United States Code, is amended—

(1) in subsection (a) by striking ''passenger'' each place that it appears;

(2) in subsection (k)(2) by striking ''flight or,'' and all that follows through ''command'' and inserting ''flight or any other flight deck crew member''; and

(3) by adding at the end of subsection (k) the following:

''(3) ALL-CARGO AIR TRANSPORTATION.—In this section, the term 'air transportation' includes all-cargo air transportation.''.

(c) TIME FOR IMPLEMENTATION.—In carrying out the amendments made by subsection (b), the Under Secretary for Border and Transportation Security of the Department of Homeland Security shall ensure that pilots of both passenger and cargo aircraft are treated equitably in receiving access to training as Federal flight deck officers.

(d) EFFECT ON OTHER LAWS.—The requirements of subsection (c) shall have no effect on the deadlines for implementation contained in section 44921 of title 49, United States Code, as in effect on the day before the date of enactment of this Act.

ORDERS FOR TUESDAY, NOVEMBER 11, 2003

Mr. FRIST. I ask unanimous consent that when the Senate completes its business today, it adjourn until 10:45 a.m. Tuesday, November 11; I further ask that following the prayer and the pledge, the morning hour be deemed expired, the Journal of proceedings be approved to date, the time for the two leaders be reserved for their use later in the day, and the Senate then begin a period of morning business until 12 p.m., with the time equally divided between Senator HUTCHISON or her designee and the minority leader or his designee.

I further ask consent that at 11 a.m. tomorrow on Veterans Day, the Senate will conduct a moment of silence as a tribute to the war dead of the United States. I further ask consent that the Senate recess tomorrow from 12:30 p.m. until 2:15 p.m. for the weekly party lunches; provided further that the Senate recess during the same period on Wednesday.

Mr. REID. Reserving the right to object, and I do appreciate the Senator setting aside Wednesday when we are going to do our caucus, not tomorrow, I have no objection.

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

PROGRAM

Mr. FRIST. For the information of all Senators, tomorrow the Senate will begin a period of morning business until 12 p.m. The morning business time will be devoted to Senators who wish to make tribute statements to our veterans. We are also attempting to clear a resolution related to our veterans during tomorrow's session.

Following morning business, the Senate will return to legislative session. There are many crucial legislative items that the Senate should complete action on over the next couple of days, including the Syria accountability bill, Department of Defense authorization conference report, Military Construction appropriations conference report, the VA/HUD appropriations bill. Senators, therefore, should anticipate rollcall votes throughout the day.

ADJOURNMENT UNTIL 10:45 A.M. TOMORROW

Mr. FRIST. If there is no further business to come before the Senate, I ask unanimous consent the Senate stand in adjournment under the previous order.

There being no objection, the Senate, at 10:01 p.m., adjourned until Tuesday, November 11, 2003, at 10:45 a.m.